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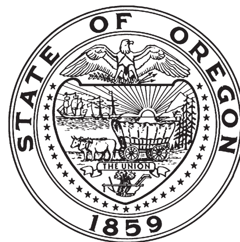

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BILL BRADBURY
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

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 Dpartment of Revenue.

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule's "History"

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2005–2006 Oregon Bulletin Publication Schedule

The Administrative Rule Unit accepts rulemaking notices and filings Monday through Friday 8:00 a.m. to 5:00 p.m at the Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97301. To expedite the rulemaking process agencies are encouraged file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and submit their filings early in the submission period to meet the following publication deadlines.

Submission Deadline	Publishing Date
December 15, 2005	January 1, 2006
January 13, 2006	February 1, 2006
February 15, 2006	March 1, 2006
March 15, 2006	April 1, 2006
April 14, 2006	May 1, 2006
May 15, 2006	June 1, 2006
June 15, 2006	July 1, 2006
July 14, 2006	August 1, 2006
August 15, 2006	September 1, 2006
September 15, 2006	October 1, 2006
October 13, 2006	November 1, 2006
November 15, 2006	December 1, 2006

Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an "Appointment of Agency Rules Coordinator" form, ARC 910-2003, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a "Delegation of Rulemaking Authority" form, ARC 915-2005. It is the agency's responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms ARC 910-2003 and ARC 915-2005 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97301, or are downloadable from the Oregon State Archives Website.

Publication Authority

The Oregon Bulletin is published pursuant to ORS 183.360(3). Copies of the original Administrative Orders may be obtained from the Secretary of State, Archives Division, 800 Summer Street, Salem, Oregon, 97301; (503) 373-0701. The Archives Division charges for such copies.

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EXECUTIVE ORDER NO. 06-01

DETERMINATION OF STATE OF EMERGENCY IN BENTON, COOS, CLATSOP, COLUMBIA, CROOK, CURRY, DESCHUTES, DOUGLAS, GILLIAM, JACKSON, JEFFERSON, JOSEPHINE, LAKE, LANE, LINCOLN, LINN, MARION, POLK, SHERMAN, TILLAMOOK, WASCO, WASHINGTON, WHEELER AND YAMHILL COUNTIES DUE TO SEVERE WEATHER AND FLOODING

Pursuant to ORS 401.055, I find that heavy rains and flooding have created a threat to life, safety and property in Benton, Coos, Clatsop, Columbia, Crook, Curry, Deschutes, Douglas, Gilliam, Jackson, Jefferson, Josephine, Lake, Lane, Lincoln, Linn, Marion, Polk, Sherman, Tillamook, Wasco, Washington, Wheeler and Yamhill counties. Beginning December 22, 2005, 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 $7,121,398, including damage to federal aid highways.

These findings were made at 10:30a.m. on January 13, 2006 and I now confirm them with this Executive Order.

NOW THEREFORE IT IS HEREBY ORDERED AND DIRECTED:

1. The Oregon Department of Transportation shall provide appropriate assistance and seek federal resources to effect repair and reconstruction of the federal aid highway system in Benton, Coos, Clatsop, Columbia, Crook, Curry, Deschutes, Douglas, Gilliam, Jackson, Jefferson, Josephine, Lake, Lane, Lincoln, Linn, Marion, Polk, Sherman, Tillamook, Wasco, Washington, Wheeler and Yamhill Counties.

2. The Office of Homeland Security's Oregon Emergency Management shall implement the State's Emergency Operations Plan, and coordinate with state and local agencies impacted by this severe weather event to facilitate any and all damage assessments that may be necessary as a result of this continuing event.

3. This order was made by verbal proclamation at 10:30a.m. on the 13th day of January, 2006 and signed this 17th day of January, 2006, in Salem, Oregon.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

A CHANCE TO COMMENT ON… PROPOSED AGREEMENT TO PERFORM REMEDIAL ACTION, ZIDELL WATERFRONT PROPERTY, PORTLAND, OREGON

COMMENTS DUE: March 15, 2006
PROJECT LOCATION: 3121 SW Moody 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 DEQ's proposed consent judgment to implement the remedial action for the Zidell Waterfront Property, located in Portland, Oregon. Parties to the proposed consent judgment include ZRZ Realty Company, Zidell Marine Corporation, and Tube Forgings of America, Inc. The consent judgment specifies the scope and schedule for remedy implementation at the site over the next 10 years and long-term monitoring and maintenance of soil and sediment caps to be installed as part of the remedy. The proposed consent judgment also settles potential liability under state environmental cleanup statutes related to site subject to completion of the remedial action in accordance with the consent judgment requirements.
HIGHLIGHTS: In June 2005, DEQ selected a final remedial action for the Zidell property following public notice and comment. DEQ's selected remedial action for soil includes: 1) removal of soil hot spots and asbestos containing material for off-site treatment and/or disposal; 2) installation and maintenance of a soil or alternative impervious material cap (e.g. buildings or paved parking) over remaining areas of soil contamination; and 3) institutional controls to prevent future contact with contaminated soil by site workers or planned future residential occupants. DEQ's selected cleanup of sediment contamination involves placing a cap over the approximate seven to eight acre area of contaminated sediments. The preliminary cap design would consist of 2 feet thick layer of sand covered with 1 foot thick layer of rock to prevent erosion of the sand cap.
HOW TO COMMENT: Copies of the proposed consent judgment and the Remedial Action Record of Decision and the Administrative Record for the site are 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. Electronic copies of the proposed consent judgment and the Record of Decision are also available online at DEQ's web site at the following address: http://www.deq.state.or.us/nwr/Zidell/zidell.htm

Please sent written comments to Chris Kaufman, Project Manager, at the address listed above or via email at kaufman.chris@deq.state.or.us. DEQ must receive written comments by 5 p.m. on March 15, 2006. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

Please notify DEQ of any special physical 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 on the proposed consent order prior to issuance. The Director will make a decision and publish the final decision after consideration of public comments.

PROPOSED REMOVAL ACTION BRADFORD ISLAND, ECSI # 2010 CASCADE LOCKS, OREGON

COMMENTS DUE: March 3, 2006
PROJECT LOCATION: Bradford Island, Bonneville Dam facility, Cascade Locks, Oregon
PROPOSAL: The Oregon Department of Environmental Quality (DEQ) is proposing removal of PCB-contaminated sediment in the Columbia River, along the north bank of Bradford Island. Public notification is required by ORS 465.320.
HIGHLIGHTS: The US Army Corps of Engineers (USACE) has been working with DEQ to address environmental problems on Bradford Island, which is within the Bonneville Dam facility. Various waste materials associated with operations at the dam were disposed of on the island between the 1940s and 1980s. In 2000, we discovered that electrical components had been dumped along the north bank of the island and some had entered the river. Some of these contained polychlorinated biphenyls, or PCBs.

The electrical equipment was removed from the river in 2000 and 2002. However, PCB-contaminated sediment on the river bottom was not removed. USACE recently completed a study evaluating options for addressing this problem. Based on this study, DEQ is proposing that sediments from the most contaminated portions of the river be removed by diver-assisted suction dredging. The area proposed for dredging covers about 0.8 acres. Solid material from the dredge slurry would be taken to a permitted landfill for disposal. The remaining water would be treated by filtration and returned to the river.

This removal is proposed as an interim action as we proceed with a larger remedial investigation to determine a final remedy to address contamination in the river and on the island. Design for this work would begin immediately following this public comment period. We are also working with several other natural resource agencies and tribal representatives to address their concerns. The proposed schedule is to conduct this work between December 2006 and March 2007.

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

Bob Schwarz, Project Manager
Phone: 541-298-7255, ext. 30
Fax: 541-298-7330
Email: Schwarz.bob@deq.state.or.us

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by Friday, March 3, 2006.
THE NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed removal action will be made after consideration of public comments.

PROPOSED REMEDIAL ACTION FOR FORMER PRINEVILLE TEXACO SITE PRINEVILLE, OR

COMMENTS DUE: March 3, 2006
PROJECT LOCATION: 341 E. Third St Road, Prineville, OR
PROPOSAL: The Department of Environmental Quality is proposing to issue a decision regarding cleanup activities at the above referenced site based on approval of an investigation conducted to date. Public notification is required by ORS 465.320.
HIGHLIGHTS: The former Prineville Texaco site occupies about 0.3 acres on the southeast corner of the block bounded by East Third, East Fourth, Court and Dunham Streets in downtown Prineville. The site operated as a gasoline station from 1940 to December 1997. The previous business names included Gold's Texaco, Don's Texaco and American Pacific Petroleum Company (APPCO). Prior to the facility's closure, in response to complaints of gasoline vapors at neighboring businesses, Oregon DEQ required the station to remove its tanks which were found to be leaking gasoline.

Gasoline and its compounds of concern, including benzene were encountered in shallow soils, shallow groundwater and in vapors inside several nearby buildings. DEQ installed sub slab ventilation systems to prevent the vapors from entering those buildings until further removal actions could be conducted. A combined shallow soil vapor extraction system and groundwater extraction system was installed and operated under the DEQ Orphan Site Program to prevent further migration of the contamination. In 2003 the City of Prineville entered into a Prospective Purchaser Agreement with DEQ to conduct additional removal actions prior to redeveloping the site. The City excavated over 2,700 tons of petroleum impacted soil and conducted both groundwater and indoor air monitoring to verify the residual levels remaining.

A risk assessment was performed based on the land and groundwater uses in the locality of the facility (LOF). The completed pathways include occupational exposures to indoor air from groundwater containing benzene, or direct inhalation of groundwater containing benzene during construction work. Based on these assumptions the residual levels of gasoline constituents remaining do not exceed the risk-based concentrations or are within levels observed in ambient air.

Based on the findings to date DEQ is proposing institutional controls to restrict future groundwater and land use to insure the assumptions at the site are maintained. DEQ believes this proposed remedy is protective as defined in OAR-340-122-0040.

COMMENT: The staff report recommending the proposed action may be reviewed by appointment at DEQ's Office in Bend, 2146 NE Fourth Street, Suite 104, Bend, OR 97701. To schedule an appointment, contact Toby Scott at (541) 388-6146, ext. 246. Written comments should be sent by March 3, 2006 to Mr. Scott at the address listed above. Questions may also be directed to Mr. Scott by calling him directly.

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

CHANCE TO COMMENT ON… RECOMMENDED NO FURTHER ACTION FOR THE ALL FOREIGN AUTOMOTIVE SITE, HILLSBORO, OREGON

COMMENTS DUE: March 1, 2006

PROJECT LOCATION: 2995 SW 221st, Hillsboro, 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 "No Further Action" cleanup decision for the All Foreign Automotive Site in Hillsboro, Oregon.

HIGHLIGHTS: DEQ has completed an evaluation of the investigation and cleanup conducted at the former All Foreign Automotive Site. The work was completed by the Reedville Crossing LLC under an agreement with DEQ for reimbursement of cleanup costs by the Oregon Dry Cleaner Program. Soil contamination, attributed to past use of petroleum products used in auto salvaging and crushing operations, was found at the site during site investigations completed in 2005. Approximately 825 tons of petroleum contaminated soils were removed from the site from June through November 2005 and disposed of in a solid waste landfill. The objective of the removal action was to remove soil contamination exceeding DEQ risk-based concentrations (RBCs).

A site remediation and soil evaluation report was submitted to DEQ in December 2005 to evaluate residual contamination in soil at the site. The evaluation concluded that there is no significant risk to human health or the environment from residual soil contamination at the site based on a comparison of site concentrations to DEQ risk-based concentrations.

DEQ has made a preliminary determination that cleanup measures undertaken by Reedville Crossing LLC of petroleum contamination released at the site during auto salvaging and crushing operations are complete and the site is currently protective of public health and the environment, and requires no further action 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 Chris Kaufman, Project Manager, at the address listed above or via email at kaufman.chris@deq.state.or.us by 5 p.m., March 1, 2006. DEQ will hold a public meeting to receive verbal comments if requested by ten or more people or by a group with 10 or more members.

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

THE NEXT STEP: DEQ will consider all public comments received by the March 1, 2006 deadline and the Regional Administrator will make a final decision after consideration of these public comments.

NO FURTHER ACTION REQUIRED AT THE FORMER LAURENCE-DAVID, INC. SITE IN EUGENE

HIGHLIGHTS: The Oregon Department of Environmental Quality (DEQ) has issued a no further action (NFA) certification of completion decision for the environmental cleanup at the site known as Laurence-David, Inc. (LDI), where a specialty paint and putty manufacturer once operated at 1400 South Bertelsen Road in Eugene. The cleanup was completed in accordance with the legal agreement entered into by Bertelsen, Inc. and the DEQ in July 2004.

Environmental investigation and cleanup activities have been conducted under DEQ oversight intermittently since 1982. In August 2002, a study was performed to assess long term alternatives for addressing contamination at the site. Some soil and groundwater at the site is contaminated with solvents and metals that, if left untreated, could pose a future risk to workers on the property. Groundwater west of the property is contaminated with solvents which could pose a risk to people if the groundwater was used locally for domestic water supplies. Currently city water is available in this area. The July 2004 legal agreement detailed the implementation of the final cleanup requirements for addressing the contamination at the LDI Site. A summary of the completed requirements follows:

- Submittal of a Work Plan on August 8, 2005, which sets forth a plan and schedule for future monitoring and maintenance activities, including periodic reviews, inspections, notifications, and reporting.
- Filing of the Easement and Equitable Servitude on May 18, 2005, which sets forth future restrictions at the site.
- Construction of a soil cap on August 11, 2005.
- Submittal of the Final Closeout Report on October 2, 2005, certifying completion and implementation of the cleanup actions.

Based on the completion of the preceding, DEQ has concluded that Bertelsen, Inc. has satisfied completion of the final cleanup actions as set forth in the legal agreement, and has issued a NFA certification decision for the former LDI site.

For questions or comments, please call or send written comments by fax or email to: Mindi English, Project Manager, 541-686-7763 (toll free at 1-800-844-8467, TTY at 541-687-5603), Fax: 541-686-7551, english.mindi@deq.state.or.us.

OTHER NOTICES

PROPOSED CLOSEOUT AT FREEWAY LAND COMPANY SITE

COMMENTS DUE: March 2, 2006
PROJECT LOCATION: 6400 SE 101st Avenue, Portland, Oregon
PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve the completion of remedial action at the Freeway Land Company (aka Smurfit-Portland Mill) site.
HIGHLIGHTS: The approximately 100-acre property was occupied by a sawmill from the early 1900s to 1977. A plywood mill operated on-site in the 1960s and 1970s. The site is currently owned by Freeway Land Company and is used by numerous site occupants for a variety of purposes including rock crushing and asphalt/concrete manufacturing, used oil recycling, waste roofing recycling, and other industrial activities. Following extensive investigation and cleanup, DEQ's Northwest Region Voluntary Cleanup Program issued a no further action (NFA) determination for the site in 1999. In 2003 a spill from the oil recycling operation released petroleum to on-site soil and an unlined ditch, while a 2004 fire destroyed a portion of the recycling operation and released material including waste oil and acids to nearby soil and groundwater, an unlined ditch, and Johnson Creek (located at the end of the unlined ditch). The release to Johnson Creek resulted in a large fish kill. Extensive investigation and cleanup work has been completed to address the 2003 and 2004 releases, and included removal of contaminated soil and groundwater from beneath the burned building, cleanout of the unlined ditch, and demolition and disposal of building remnants. Contamination was generally removed to non-detectable levels with the exception of below the building, where residual soil contamination is localized and below DEQ risk-based concentrations. Contaminants were generally not detected in Johnson Creek within a few days of the initial release; no residual impacts to the creek are therefore expected. DEQ also reviewed other site operations for changes since the 1999 NFA that might require additional work; none were found. Based on this information no further site action appears to be necessary. A staff report presenting DEQ's recommendation will be available for public review beginning February 1, 2006.
HOW TO COMMENT: To review project records, contact Dawn Weinburger at (503) 229-6729. The DEQ project manager is Dan Hafley (503-229-5417). Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by March 2, 2006. A public meeting will be held to receive verbal comments if requested by 10 or more people, or by a group with a membership of 10 or more.
THE NEXT STEP: DEQ will consider all comments received and make a final decision after consideration of these comments.

PROPOSED NO FURTHER ACTION AT THE FORMER UNITED DISPOSAL SITE IN SILVERTON

COMMENTS DUE: February 28, 2006
PROJECT LOCATION: Former Green's Wrecking Yard, 1007 South Pacific Highway, Talent
PROPOSAL: DEQ is recommending no further cleanup action at the Former Green's Wrecking Yard Site. This notification is required by ORS 465.320.
HIGHLIGHTS: The site is a former auto wrecking facility that will be redeveloped for light industrial uses. Between April and August 2005, approximately 95 cubic yards of total petroleum hydrocarbon (TPH) impacted soil was removed and disposed of at the Rogue Valley Transfer Station. There is no unacceptable human health residual risk for this site, as a removal action was undertaken and petroleum contaminated soils have been removed and disposed of. Remaining concentrations of TPH-diesel petroleum hydrocarbons in soil are below residential risk- based concentrations for ingestion, dermal contact, and inhalation human exposure. DEQ recommends no further action at the site. A copy of the staff report will be available for review at DEQ's Medford and Eugene offices during the public comment period.
HOW TO COMMENT: The staff report and project files Project documents are available for review at DEQ's Eugene Office. The Eugene office is located at 1102 Lincoln Street, Suite 210 in Eugene, Oregon. A copy of the staff report will also be available for review at DEQ's Medford Office, located at 221 Stewart Avenue, Suite 201 in Medford, Oregon. Comments should be directed to Mindi English at 1102 Lincoln Street, Suite 210, Eugene, Oregon 97401 or (800)844-8467 extension 7763 by February 28, 2006. A public meeting will be held to receive verbal comments if requested by 10 or more persons or by a group with a membership of 10 or more.
THE NEXT STEP: DEQ will consider all public comments and the director will before making a final decision in this matter, expected in March 2006, and publish the final decision after consideration of public comments.

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

Agencies providing notice request public comment on whether other options should be considered for achieving a proposed administrative rule's substantive goals while reducing negative economic impact of the rule on business.

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

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

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Board of Architect Examiners
Chapter 806

Rule Caption: Participation in Architectural Design Competitions.

Date:	Time:	Location:
3-1-06	9 a.m.	OBAE Conf. Rm. 205 Liberty St. NE, #A Salem, OR 97301

Hearing Officer: Kim Arbuckle
Stat. Auth.: ORS 670, 671 & 671.125
Stats. Implemented: ORS 671.010, 671.050, 671.060, 671.065, 671.080 & 671.085
Proposed Amendments: 806-010-0037, 806-010-0075
Last Date for Comment: 3-1-06, 1 p.m.
Summary: The purpose of this rule amendment is to provide rules for allowing individuals/firms that are not registered in Oregon to participate in public architectural design competitions, and to clarify when/how the architect title may be used and when Oregon registration is required after being selected as the architect for the project.
Rules Coordinator: Carol Halford
Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301
Telephone: (503) 763-0662

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Board of Optometry
Chapter 852

Rule Caption: Amend Rules with regard to Diagnostic and Non-topical Pharmaceutical Agent Certification.

Date:	Time:	Location:
3-17-06	1 p.m.	1900 Hines St., SE Mezzanine Level Salem, OR 97302

Hearing Officer: John Reslock, O.D., President
Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.120, 683.210(1), 683.270 & 182.466
Proposed Amendments: Rules in 852-020, 852-050, 852-080
Last Date for Comment: 3-17-06
Summary: 852-020 - Delete reference to diagnostic pharmaceutical agents; Insert licensure requirement for Nontopical pharmaceutical agents.

852-050 - Delete reference to 852-080 subsection regarding CPR certification requirements.

852-080 - Delete requirements for DPA certification; Revise requirements for AT certification; Add requirements for ATI certification.
Rules Coordinator: David W. Plunkett
Address: Board of Optometry, PO Box 13967, Salem, OR 97309-1967
Telephone: (503) 399-0662, ext. 23

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Bureau of Labor and Industries
Chapter 839

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100 - 659A.145
Proposed Amendments: 839-005-0010
Last Date for Comment: 2-23-06
Summary: The proposed amendments would clarify the requirements for accommodation of disabled persons by referencing those requirements in OAR 839-005-0010(3).
Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (971) 673-0784

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Columbia River Gorge Commission
Chapter 350

Rule Caption: Amendments to Commission Rules for Open Meetings, Public Records, Financial Disclosure, Administrative Procedure, Plan Amendments.

Date:	Time:	Location:
3-14-06	9 a.m.	Hood River Co. Admin. Bldg. 601 State St. Hood River, OR

Hearing Officer: Staff
Stat. Auth.: ORS 196.150
Other Auth.: RCW 43.97.015, 16 U.S.C. 544c(b)
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. 544c(b), 544d(h)
Proposed Adoptions: 350-012-0009, 350-050-0035, 350-050-0045
Proposed Amendments: 350-011-0004, 350-012-0006, 350-012-0007, 350-012-0008, 350-013-0001, 350-016-0004, 350-050-0030, 350-050-0040, 350-050-0050, 350-050-0060, 350-050-0070, 350-050-0080, 350-050-0085, 350-050-0090, 350-050-0100
Proposed Repeals: 350-050-0075, 350-050-0110
Last Date for Comment: 3-3-06
Summary: The purpose of the proposed amendments to Commission Rules 350-11, 12, and 16 is to conform these rules to the more restrictive of Oregon's and Washington's statutes as required by the Scenic Area Act. These proposed amendments are necessary due to changes made during the 2005 legislative sessions. There is no anticipated effect for 350-11; Two anticipated effects for 350-12 are that the Commission may choose to charge for copies of public records on an installment basis rather than as a lump sum and to exempt communications made during mediation from public disclosure. There is no anticipated effect for 350-16.

The purpose of the proposed amendment to Commission Rule 350-13 is to ease the burden on Gorge Commissioners filing financial disclosure forms, while still complying the Scenic Area Act's requirement for filing. The proposed amendment would require Gorge Commissioners to file in their respective states only.

The purpose of the proposed amendments to Commission Rule 350-50 is to improve the Commission's process for reviewing Plan Amendments. The proposed amendments: would allow a finding that

conditions in the Scenic Area have changed if there is a demonstrable mistake in the Management Plan; allows typographical and other similar changes without formal amendment of the Management Plan; requires a pre-application conference for every plan amendment, increases by two weeks the time the Commission's Executive Director has to review an application before submitting a recommendation to the Commission, and clarifies what actions the Commission may take on the application.
Rules Coordinator: Nancy A. Andring
Address: Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672
Telephone: (509) 493-3323

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Construction Contractors Board
Chapter 812

Rule Caption: Home Inspector Rule Amendments — Housekeeping

Date:	Time:	Location:
2-28-06	11 a.m.	West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

Hearing Officer: Cliff Harkins
Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355
Stats. Implemented: ORS 701.350 & 701.355
Proposed Amendments: 812-008-0050, 812-008-0090, 812-008-0202
Last Date for Comment: 2-28-06, 11 a.m.
Summary: OAR 812-008-0050 is amended to change the title from "Agreements" to "Contracts."

OAR 812-008-0090 is amended to correct the cite reference.

OAR 812-008-0202 is amended to change the title from "Purpose and Scope" to "Contracts and Reports" to reflect the topic of the rule. This rule also is amended to place a heading above it of "Standards of Practice."
Rules Coordinator: Catherine Dixon
Address: Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310
Telephone: (503) 378-4621, ext. 4077

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Department of Agriculture
Chapter 603

Rule Caption: Sets fees for four new laboratory tests available to seed exporters.

Date:	Time:	Location:
2-28-06	2 p.m.	ODA, Hearings Rm. 635 Capitol St. NE Salem, OR

Hearing Officer: Ron McKay
Stat. Auth.: ORS 561.190 & 632.940
Other Auth.: ORS 570.305
Stats. Implemented: ORS 632.940
Proposed Amendments: 603-052-1150
Last Date for Comment: 3-3-06
Summary: The proposed amendment would add fees for four new laboratory tests. Visual exam for pesticide-treated seed ($60), Visual exam for regulated pests and regulated contaminants ($70), seed grow out for bacteria ($140), and ELISA for virus detection in seed ($140). These new tests are being requested by seed exporters to meet market requirements. Currently they are offered at $70/hour. There will be no net change in cost to the customer. New technologies make it possible for the Oregon Department of Agriculture Laboratory to offer some of these tests.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

Rule Caption: Amends rules related to nurseries; creates emergency response fund, repeals apple ermine moth quarantine, etc.

Date:	Time:	Location:
2-28-06	3 p.m.	ODA, Hearings Rm. 635 Capitol St. NE Salem, OR

Hearing Officer: Ron McKay
Stat. Auth.: ORS 561.190 & OL Ch. 540 (2005)
Other Auth.: ORS 570.305, 571.055 & 571.145
Stats. Implemented: OL Ch. 540 (2005)
Proposed Amendments: 603-052-0127, 603-054-0016, 603-054-0017, 603-054-0018, 603-054-0024
Proposed Repeals: 603-052-0146
Last Date for Comment: 3-3-06
Summary: Oregon Laws Chapter 540 (2005) created a plant pest & disease emergency response fund. A surcharge on nursery license fees will be used to maintain a $250,000 balance. Amendments to: 603-054-0016, 603-054-0017, 603-054-0018 would implement this statute by adding a surcharge to nursery license fees. Additional, proposed amendments would: add European chafer and Oriental beetle to the Japanese beetle quarantine (603-052-0127); change the fee schedule for phytosanitary certificates from $20 for the first and $10 each for subsequent certificates issued in the same billing period to a flat $10 each. The Department is proposing to repeal Oregon's apple ermine moth quarantine. No other state quarantines this insect and biological controls have been introduced to keep populations below economic thresholds.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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Rule Caption: Amend 603-001-0135 to include language inadvertently omitted in June 2005. Amend 603-001-0140, add "working."
Stat. Auth.: ORS 183 & 561
Stats. Implemented: ORS 192.240
Proposed Amendments: 603-001-0135, 603-001-0140
Last Date for Comment: 2-28-06
Summary: Amendment to 0135 corrects a typographical error made in an earlier rule making and inserts an omitted phrased. Amendment to 0140 clarifies that the agency has 20 working days to respond to requests.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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Department of Community Colleges
and Workforce Development
Chapter 589

Rule Caption: Distribution of WIA Title 1B Incentive Grants.
Stat. Auth.: ORS 326.370
Stats. Implemented:
Proposed Amendments: 589-020-0210
Proposed Repeals: 589-020-0260
Last Date for Comment: 2-22-06
Summary: Amending OAR 589-020-0210 is necessary to adjust and update language regarding Workforce Investment Act (WIA) regulations and transfer procedures to agency policy for the distribution of WIA Title 1B Incentive Grant Awards. Repealing OAR 589-020-0260 is necessary because the information in this rule will be addressed in the amended OAR 589-020-0210.
Rules Coordinator: Laura J. Roberts
Address: Department of Community Colleges and Workforce Development, 255 Capitol St. NE, Salem, OR 97310-0001
Telephone: (503) 378-8648, ext. 238

Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Amends two long term care insurance rules, extending an effective date and governing advertising review.
Stat. Auth.: ORS 731.244 & 742.009
Stats. Implemented: ORS 742.005, 742.009, 743.018, 743.650, 743.652 & 743.655
Proposed Amendments: 836-052-0676, 836-052-0696
Last Date for Comment: 2-24-06
Summary: This rulemaking proposes permanently adopt temporary rulemaking relating to long term care insurance. The temporary rulemaking amended the rule relating to premium rate schedule increases, to extend its effective date from September 1, 2005, to March 1, 2006, and amended the rule governing the submission of advertising to the Insurance Division for review, to restore prior wording that requires review only when the Division so requests.
Rules Coordinator: Sue Munson
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301
Telephone: (503) 947-7272

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Rule Caption: Technical correction of rules relating to credit scoring.
Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 746.015, 746.240, 746.600, 746.650, 746.661 & 746.663
Proposed Amendments: 836-080-0430, 836-080-0438
Last Date for Comment: 2-24-06
Summary: This rulemaking proposes to permanently adopt temporary rulemaking that amended OAR 836-080-0430 and 836-080-0438, both of which relate to credit scoring. The amendment to OAR 836-080-0430 deletes provisions relating to the use of credit history or insurance score in connection with rating a policy at renewal. The amendment to OAR 836-080-0438 updates an obsolete subparagraph reference.
Rules Coordinator: Sue Munson
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301
Telephone: (503) 947-7272

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Department of Consumer and Business Services, Minority, Women and Emerging Small Business
Chapter 445

Rule Caption: The Emerging Small Business eligibility requirements are modified to create a two-tier designation system.

Date:	**Time:**	**Location:**
2-17-06	10 a.m.	350 Winter St. NE Labor & Industries Bldg. Conf. Rm. F Salem, OR

Hearing Officer: Sheila Haywood
Stat. Auth.: ORS 200.500
Stats. Implemented: 2005 OL, Ch. 683
Proposed Amendments: 445-050-0115, 445-050-0125, 445-050-0135
Last Date for Comment: 2-17-06
Summary: These rule changes implement the following changes made by 2005 Oregon Laws Chapter 683:

Creates a two-tier system for certification of emerging small businesses and modifies the qualifications by increasing the employee and gross-receipts thresholds. “Tier one firm” means a business that employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed $1.5 million for a business performing construction, as defined in ORS 446.310, or $600,000 for a business not performing construction. “Tier two firm” means a business that employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed $3 million for a business performing construction, as defined in ORS 446.310, or $1 million for a business not performing construction.

Increases the limit on certification from seven to twelve years, six years at each tier. Allows reinstatement of a formerly certified business if the business still qualifies as an emerging small business and has eligibility remaining.

Transfers the Emerging Small Business Account from the Consumer and Business Services Fund to the State Highway Fund.
Rules Coordinator: Sheila Haywood
Address: Department of Consumer and Business Services, Office for Minority, Women and Emerging Small Business, 350 Winter St. NE, Salem, OR 97309
Telephone: (503) 947-7950

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

Rule Caption: Proposed amendment of rules affecting medical fees and payment for the treatment of injured workers.

Date:	**Time:**	**Location:**
2-21-06	10 a.m.	Rm. F (basement, Labor & Industries Bldg.) 350 Winter St. NE Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248, 656.245, 656.247, 656.252, 656.254, 656.256 & 626.704
Proposed Amendments: Rules in 436-009
Last Date for Comment: 2-24-06
Summary: The agency proposes to amend OAR chapter 436-009. These proposed rules:

• Replace all references to “usual and customary fees” with “usual fees” (because the prior term is sometimes inappropriately used to describe what is usual and customary in the marketplace, not just for the specific provider);

• Adopt by reference updated medical resources (436-009-0004):

- Centers for Medicare & Medicaid Services 2006 Medicare Resource-Based Relative Value Scale Addendum B “Relative Value Units (RVUs) and Related Information” except the “status indicators,” and Addendum C “Codes with Interim RVUs,” 70 Federal Register No. 223, November 21, 2005 as the fee schedule for payment of medical service providers except as otherwise provided in the rules;

- *American Society of Anesthesiologists (ASA), Relative Value Guide 2006* as a supplementary fee schedule for payment of anesthesia service providers except as otherwise provided in the rules for anesthesia codes not found in the Federal Register; and

- *The Physicians’ Current Procedural Terminology (CPT® 2006)*, Fourth Edition Revised, 2005 for billing by medical providers;

• Allow, but do not require, use of the Healthcare Common Procedure Coding System (HCPCS) (436-009-0010(4));

• Clarify discounting for late billings (436-009-0010(5));

• Replace modifier -81, now used for both physician assistants and nurse practitioners, with modifiers -08 for physician assistants and -09 for nurse practitioners (436-009-0015(10)) (Modifier -81 will continue to be used for assisting in surgery - 436-009-0050);

• Clarify procedures for separating hospital outpatient charges subject to the hospitals cost/charge ratio from all other charges (436-009-0020(2));

• Add to medical data reporting criteria provider-type codes for ambulatory surgical center, home health care, nursing home care, psychologist, and radiologist (no new data fields) (436-009-0030);

• Clarify that a pre-operative visit related to elective surgery need not be “immediate” to be included in the global value of the surgical procedure (436-009-0050(3));

• Increase physician assistants' and nurse practitioners' fees from 10% to 15% of the surgeon's allowable fee for a surgical procedure; (436-009-0050(3));

• Modify the Oregon-specific codes for medical arbiter examinations from "A" to "AR" codes (e.g. OSC-A**R**001), because some current codes match the national HCPCs codes for ambulance services (436-009-0070);

• Define (for purpose of clarification) "prosthetic," "orthosis," and "medical supplies" (436-009-0080);

• Require insurers to pay for durable medical equipment at 85% of the manufacturer's suggested retail (MSRP) price; if MSRP is not available, the insurer must pay the provider 140% of the applicable invoice (436-009-0022 & 0080).

Address questions to:

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

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

Rules Coordinator: Fred Bruyns
Address: Department of Consumer and Business Services, Workers' Compensation Division, 350 Winter St. NE, Salem, OR 97301-3879
Telephone: (503) 947-7717

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Department of Corrections
Chapter 291

Rule Caption: Change in Classification System for Assigning Custody Level to Inmates.

Date:	Time:	Location:
2-21-06	8:30 a.m.	Department of Corrections Conf. Rm. 259 2575 Center St. NE Salem, OR 97301

Hearing Officer: Birdie Worley
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Adoptions: 291-104-0111 – 291-104-0135
Proposed Amendments: 291-104-0005, 291-104-0010
Last Date for Comment: 3-3-06, 5 p.m.
Summary: The department has developed a new custody classification tool that relies on objective data that associates inmate characteristics (factors) with inmate misconduct. The tool also incorporates a number of elements that address the risk an inmate may pose to the public. These changes to the classification system will assist institutions in behavior-based management. These proposed rule modifications are necessary to implement the new methodology for assigning inmates with the appropriate custody classification level.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Stat. Auth.: ORS 137.619, 137.630, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.619, 137.630, 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-065-0005 – 291-065-0007
Proposed Repeals: 291-065-0010
Last Date for Comment: 3-3-06, 5 p.m.
Summary: The Community Corrections Act gives counties the option to directly operate community corrections rather than the Department of Corrections. Recently some counties have opted to turn operation of community corrections back to the Department of Corrections. These rule amendments are necessary to update the duties for state parole and probation officers.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-016-0010 – 291-016-0100
Last Date for Comment: 3-3-06, 5 p.m.
Summary: These rule amendments are necessary to update the policies and procedures that control access of persons, vehicles, tools and equipment to Department of Corrections correctional facilities. New provisions have been added for access by other agency liaison, in particular police offices and parole officers, who enter correctional facilities to conduct official business. Other provisions have been added to control access of electronic communication devices into correctional facilities.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Department of Environmental Quality
Chapter 340

Rule Caption: Adopts Low Emission Vehicle (LEV) standards, establishes manufacturer permit fee and amends related enforcement rules.

Date:	Time:	Location:
2-21-06	7 p.m.	Community Justice Center 1101 W Main St., Suite 101 Medford, OR
2-22-06	7 p.m.	Central Oregon Association of Realtors 2112 NE 4th St. Bend, OR
2-23-06	7 p.m.	Pendleton City Hall Community Rm. 500 SW Dorian Ave. Pendleton, OR
2-27-06	7 p.m.	DEQ Headquarters Rm. 3A (3rd Flr.) SW 6th Ave. Portland, OR

Hearing Officer: DEQ Staff
Stat. Auth.: ORS 468.020, 468A.010, 468A.015, 468.130, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Proposed Adoptions: 340-256-0220, 340-257-0010, 340-257-0020, 340-257-0030, 340-257-0040, 340-257-0050, 340-257-0060, 340-257-0070, 340-257-0080, 340-257-0090, 340-257-0100, 340-257-0110, 340-257-0120, 340-257-0130, 340-257-0140, 340-257-0150, 340-257-0160
Proposed Amendments: 340-012-0054, 340-012-0135, 340-012-0140
Last Date for Comment: 3-3-06, 5 p.m.
Summary: This rulemaking notice proposes the adoption of California's Motor Vehicle Emission standards as the Oregon Low Emission Vehicle (LEV) program. The program will apply to new vehicles sold in Oregon beginning with the 2009 model year. This proposal also expands the definition of indirect sources to include vehicle manufacturers and makes those manufacturers subject to indirect source permits and permit fees. This proposal will also amend DEQ's enforcement regulations and require certain new vehicles to meet Oregon LEV standards in order to pass DEQ's Vehicle Inspection Program emissions test.

To submit comments or request additional information, please contact Dave Nordberg at the Department of Environmental Quality (DEQ), 811 SW Sixth Ave., Portland, OR 97204 toll free in Oregon at 800-452-4011 or (503) 229-5519, or by fax at (503) 229-5675,

or visit DEQ's website http://www.deq.state.or.us/news/public notices/
Rules Coordinator: Larry McAllister
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6412

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Renewal requirements for commercial sardine limited entry permits.

Date:	Time:	Location:
3-17-06	8 a.m.	Embarcadero Resort Hotel 1000 SE Bay Blvd. Newport, OR 97365

Hearing Officer: ODFW Commission
Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
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: 3-17-06
Summary: Establish renewal requirements for commercial sardine limited entry permits. Housekeeping and technical correction to the regulations may occur to ensure rule consistency.
Rules Coordinator: Tina Edwards
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

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Department of Forestry
Chapter 629

Rule Caption: Liability of forestland owner or operator further defined.

Date:	Time:	Location:
2-22-06	3 p.m.	Mt. Mazama Rm. OR Institute of Technology Klamath Falls, OR
3-1-06	1 p.m.	Tillamook Rm. ODF HQ 2600 State St. Salem, OR

Hearing Officer: Charlie Stone
Stat. Auth.: ORS 526.041(1)
Stats. Implemented: ORS 477.120
Proposed Adoptions: 629-042-0100
Last Date for Comment: 3-3-06, 5 p.m.
Summary: The proposed rule provides guidance to the application of ORS 477.120 with regard to the liability of owners and operators when a fire occurs as the result of an operation or burning of forestland. The rule states conditions when the forester shall presume a fire resulted from an operation and provides additional definition to the term "operation area." The rule also guides the forester in determining what are "reasonably available personnel and equipment" in the context of the requirement that owners and operators make "every reasonable effort" to fight a fire when that responsibility applies.

A copy of the complete rule proposal may be obtained by contacting Gayle Birch at the address or phone number shown above, or by e-mail at gbirch@odf.state.or.us.
Rules Coordinator: Gayle Birch
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

Department of Human Services, Public Health
Chapter 333

Date:	Time:	Location:
2-22-06	10 a.m.	Portland State Office Bldg. Rm. 918 800 NE Oregon St. Portland, OR

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 431, 432 & 433
Other Auth.: 2005 OL, Ch. 516 (HB 2706)
Stats. Implemented: ORS 431, 432 & 433
Proposed Amendments: 333-012-0260, 333-012-0265, 333-018-0030
Proposed Repeals: 333-012-0265(T), 333-018-0030(T)
Last Date for Comment: 2-22-06, 5 p.m.
Summary: The Department of Human Services is proposing to permanently amend Oregon Administrative Rules (OAR): 333-012-0260 and 333-012-0265 relating to informed consent; and 333-018-0030 relating to the reporting of HIV test results. OAR's 333-012-0265 and 333-018-0030 were temporarily amended in order to implement 2005 Oregon Laws, Chapter 516 (HB 2706) and 333-019-0036 which requires physicians and others attending pregnant women in Oregon to include HIV testing among other previously required prenatal tests for infectious diseases.

OAR 333-012-0260 will be revised to reflect current Department terminology and correct statutory references.

OAR 333-012-0265 outlines informed consent rules for HIV testing. It will be revised to exempt prenatal testing.

OAR 333-018-0030 will be revised to exempt laboratories from the requirement that they collect a form from the physician assuring that all special procedures relating to consent for testing have been followed and containing demographic data on the patient and reason for test.
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: Amendments to the rules relating to food safety in food service establishments.

Date:	Time:	Location:
2-27-06	9 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 140 Portland, OR

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 624.100, 624.390, 624.495, 624.510 & 624.570
Stats. Implemented: ORS 624.100, 624.390, 624.495, 624.510 & 624.570
Proposed Amendments: 333-012-0053, 333-012-0061, 333-012-0070, 333-150-0000, 333-157-0000, 333-157-0010, 333-157-0027, 333-157-0030, 333-157-0045, 333-157-0070, 333-157-0080, 333-158-0000, 333-158-0010, 333-160-0000, 333-162-0020, 333-162-0030, 333-162-0040, 333-162-0280, 333-162-0680, 333-162-0880, 333-162-0890, 333-162-0910, 333-162-0920, 333-162-0940, 333-162-0950, 333-162-1005, 333-170-0060, 333-175-0011 - 333-175-0101
Proposed Repeals: 333-162-0000, 333-162-0010, 333-162-0060 - 333-162-0270, 333-162-0290 - 333-162-0460, 333-162-0480 - 333-162-0670, 333-162-0690 - 333-162-0870, 333-162-0960 - 333-162-1000, 333-162-1010, 333-162-1020
Last Date for Comment: 2-27-06, 5 p.m.
Summary: The Department of Human Services (DHS), Foodborne Illness Prevention Program is proposing to amend rules relating to food safety in food service establishments. These rule amendments will require mobile food units to comply with the same food safety standards as restaurants including increased standards for handwashing, temperature control, food storage and staff knowledge.

These amendments also include minor housekeeping changes to the rules for Bed and Breakfast Facilities and the rules relating to the intergovernmental relationship between DHS and Local Public Health Authorities. The Food Sanitation Rules are also being amended. These changes will include improved standards for handwashing and parasite destruction in raw fish in restaurants as well as several other minor amendments to the rules.

Rules Coordinator: Christina Hartman

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

Telephone: (971) 673-1291

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Department of Human Services,
Self-Sufficiency Programs
Chapter 461

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

Date:	Time:	Location:
2-22-06	10 a.m.	Rm. 251 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 181.537, 409.050, 410.070, 411.060, 411.070, 411.122, 411.816 & 418.100

Other Auth.: 7 CFR 273.1, 7 CFR 273.1(c), 7 CFR 273.11(c), 7 CFR 273.5, State Medicaid Manual § 3301.3, Federal waiver authorized by sec. 1115 of the Social Security Act, P.L. 104-193, Sec. 1905(p) of the Social Security Act (42 U.S.C. 1396d), HB 3268 (2005 Oregon Legislative Session) & HB 2696 (2003 Oregon Legislative Session)

Stats. Implemented: ORS 181.537, 411.060, 411.070, 411.095, 411.113, 411.122, 411.610, 411.700, 411.795, 411.816, 412.600, 413.200, 414.042, 414.105, 415.105, 418.047, 418.100, 1999 OL Ch. 859 & 2005 OL Ch. 494

Proposed Adoptions: 461-175-0206

Proposed Amendments: 461-110-0370, 461-110-0630, 461-115-0071, 461-115-0530, 461-135-0010, 461-135-0095, 461-135-0570, 461-135-0832, 461-135-0835, 461-135-0875, 461-135-0950, 461-145-0150, 461-145-0190, 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-160-0015, 461-160-0040, 461-160-0410, 461-160-0530, 461-160-0700, 461-165-0140, 461-165-0180, 461-165-0410, 461-165-0420, 461-165-0430, 461-195-0621

Last Date for Comment: 2-22-06

Summary: OAR 461-110-0370 is being amended to reorganize and to resolve any inconsistencies in the current rule on the subject of the composition of the filing group for the Food Stamp program.

OAR 461-110-0630 is being amended to reflect that Medical Assistance Assumed (MAA) applicants are not excluded from the MAA need group due to a Temporary Assistance to Needy Family (TANF) disqualification.

OAR 461-115-0071 is being amended to clarify who must sign the application for the Oregon Health Plan (OHP).

OAR 461-115-0530 is being amended to reflect the length of the certification period for Oregon Health Plan (OHP) benefits for applicants who are, and who are not, currently receiving Department of Human Services (DHS) medical benefits.

OAR 461-135-0010 is being amended to indicate that individuals who have lost their eligibility for Supplemental Security Income (SSI) as defined in Title XVI of the Social Security Act for a reason that is specifically prohibited under Title XIX of the Social Security Act are still assumed eligible for OSIPM (medical assistance for the aged, blind and disabled).

OAR 461-135-0095 is being amended as follows: to clarify that persons must have been eligible for and receiving Medical Assistance Assumed (MAA) or Medical Assistance to Families (MAF) in order to be considered for EXT (Extended Medical); to remove references regarding clients disqualified from Temporary Assistance to Needy Families (TANF) for failure to comply with requirements of the Job Opportunity and Basic Skills (JOBS) program; and to indicate that some clients who lose EXT eligibility can regain eligibility if they again meet non-financial eligibility requirements. References to the Assessment Program have also been removed.

OAR 461-135-0570 is being amended to add the statement that students participating in a meal plan offered by the institution they are attending are ineligible for food stamp benefits.

OARs 461-135-0832 and 461-135-0835, pertaining to the recovery of public assistance from the estates of deceased Medicaid recipients or their surviving spouse, are being amended to clarify the definition of "Value", and to relocate (from OAR 461-135-0832(27) to 461-135-0835(2)) and update the text concerning estate recovery deferral when there is a surviving spouse.

OAR 461-135-00875 is being amended to state more precisely the earliest date medical benefits can start for clients determined to be eligible for medical assistance retroactively.

OAR 461-135-0950 is being amended to make permanent a temporary rule change implementing Senate Bill 913 (2005) and ORS 411.113 and revising the rules concerning suspension of medical assistance for inmates of public institutions who are either persons receiving medical assistance because of serious mental illnesses, on SSI, or pregnant women. The definitions of "inmate" and "public institution" are updated for consistency with current law.

OAR 461-145-0150 is being amended to add QMB (Qualified Medicare Beneficiaries – additional medical coverage for Medicare recipients) as one of the programs that excludes certain types of educational grants of and loans from client income in considering eligibility.

OAR 461-145-0190 is being amended to permit clients to exclude from income the value of checks or vouchers to children or seniors under the Oregon Farm Direct Nutrition program.

OAR 461-155-0250 is being amended to eliminate the excess SSI benefit (ESB) resource amount for Oregon Supplemental Income Program (OSIP) clients. The ESB is used to offset special and service need payments in the amount $10.30 or $18.40, depending on the number in the need group. This rule is also being amended to raise the adjusted income limit for the OSIP-EPD (supplemental income for employed persons with disabilities) and OSIPM-EPD (medicaid coverage for employed persons with disabilities) programs to reflect the increase in the federal poverty standards for 2006.

OAR 461-155-0290 is being amended to raise the Adjusted Income Standard for the QMB-BAS program (the basic program providing additional medical coverage to qualified medicare beneficiaries). This increase in allowable income is directly related to the increase in the federal poverty standards. The income limit is 100% of the federal poverty standard (FPL) and changes every April, based on the FPL changes earlier (usually February) in the year. This amendment will affect clients eligible for the program and applicants who may have been over income previously.

OAR 461-155-0291 is being amended to raise the Adjusted Income Standard for the QMB-DW program (a program for disabled workers which pays the Medicare Part A premium for eligible individuals under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed). This increase in allowable income is directly related to the increase in the Federal Poverty Standards (FPL). The income limit is 200% of the Federal Poverty standard and changes every April, based on the FPL changes earlier (usually February) in the year. This amendment will affect clients eligible for the program and applicants who may have been over income previously.

OAR 461-155-0295 is being amended to raise the Adjusted Income Standard for the QMB-SMB (special Medicare beneficiary) program, which pays all or part of the Medicare Part B premium for qualified individuals. This increase in allowable income is directly related to the increase in the Federal Poverty Standards (FPL). The income level for the SMB subset of QMB-SMB is from 100% of FPL up to 120% of the FPL. The income level for the SMF subset of QMB-SMB (for which the federal acronym is QI-1) is from 120

up to 135% FPL. These standards change every April, based on the FPL changes earlier (usually February) in the year. This amendment will affect clients eligible for the program and applicants who may have been over income previously.

OAR 461-160-0015 is being amended to make several corrections to the resource limit for the financial group in the food stamp program, including a cross reference to the definition of elderly and disabled consistent with federal law. The amendment removes the special resource limit for persons working under JOBS Plus because that waiver ended in September 2003.

OAR 461-160-0040 is being amended to clarify when child care is deductible and when it is paid for in various public assistance programs.

OAR 461-160-0410 is being amended to more clearly reflect current federal regulations regarding the proration of deductions for groups in the Food Stamp program containing an ineligible non-citizen or a person disqualified for not providing their Social Security Number.

OAR 461-160-0530 is being amended to eliminate the excess SSI benefit (ESB) resource amount for Oregon Supplemental Income Program clients. The ESB is used to offset special and service need payments in the amount of $10.30 or $18.40, depending on the number in the need group.

OAR 461-160-0700 is being amended to indicate more clearly that average income is used in determining Oregon Health Plan (OHP) eligibility for all members of the need group, and if not eligible using average income, budget month income is used for some members of the need group.

OAR 461-165-0140 is being amended to change the right of survivorship to Food Stamp benefits and to remove outdated language about Food Stamp coupons.

OAR 461-165-0180, which concerns the eligibility requirements for child care providers, is being amended to: allow the Department to conduct a weighing test for eligibility if the Department receives additional information indicating a risk to children; remove references to providers under age 18; clarify provider reporting requirements around additional persons or employees; add additional examples of hazards that require barriers; require providers to be reviewed for eligibility; explain provider ineligibility for payment and findings; and clarify rule with minor wording changes.

OAR 461-165-0410 concerning disqualification of child care providers is being amended to clarify the rule by defining terminology and correcting rule references.

OAR 461-165-0420 concerning the disqualification of child care providers is being amended to expand the information that the Department may consider to determine that a subject individual is not likely to jeopardize the safety of children in the provider's care, and to clarify rule by defining terminology and correcting rule references.

OAR 461-165-0430 concerning child care provider hearings is being amended to clarify the rule by including cross-references to other rules.

OAR 461-175-0206 is being adopted to clarify the relationship between ORS 411.095 and the other notice of decision situations that apply to public assistance programs in division 461-175 of the Oregon Administrative Rules, such as mass change notices.

OAR 461-195-0621 is being amended to clarify the types of intentional program violations and convictions that lead to 10-year disqualifications in the Food Stamp and TANF programs.

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

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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

Rule Caption: Update language and reduce permit fees.

Date:	**Time:**	**Location:**
2-27-06	10 a.m.	Mt. Hood Conf. Rm. 4760 Portland Rd. NE Salem, OR

Hearing Officer: John Caul
Stat. Auth.: ORS 476.030, 480.110 - 480.165 & 480.990
Stats. Implemented: ORS 480.110 - 480.165
Proposed Amendments: 837-012-0620, 837-012-0625
Last Date for Comment: 2-27-06, 5 p.m.
Summary: These rule changes include updating language. They are also necessary to downward adjust retail fireworks permit fees not ratified by the 2005 legislature. Previous temporary rules were filed regarding permit fees, and this permanent rule filing is to repeal the previous temporary rules.
Rules Coordinator: Pat Carroll
Address: Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305
Telephone: (503) 373-1540, ext. 276

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Rule Caption: Update language and reduce permit fees.

Date:	**Time:**	**Location:**
2-27-06	11 a.m.	4760 Portland Rd. NE Salem, OR

Hearing Officer: John Caul
Stat. Auth.: ORS 476.030, 480.110 - 480.165 & 480.990
Stats. Implemented: ORS 480.110 - 480.165 & 480.990
Proposed Amendments: 837-012-0750, 837-012-0855, 837-012-0900, 837-012-0910
Last Date for Comment: 2-27-06, 5 p.m.
Summary: These rule changes are necessary to downward adjust public display fireworks permit fees not ratified by the 2005 legislature. Previous temporary rules were filed regarding permit fees, but the permanent rule filing process has not been completed yet.
Rules Coordinator: Pat Carroll
Address: Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305
Telephone: (503) 373-1540, ext. 276

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Rule Caption: This rule change is for consistency of the fireworks rule definitions.

Date:	**Time:**	**Location:**
2-27-06	9 a.m.	Mt. Hood Conf. Rm. 4760 Portland Rd NE Salem, OR

Hearing Officer: John Caul
Stat. Auth.: ORS 476.030 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Proposed Amendments: 837-012-0510, 837-012-0555
Last Date for Comment: 2-27-06, 5 p.m.
Summary: Changes are being made to 837-012-0510(19) to add wording to the definition of "Retail Fireworks" to be consistent with the definition of retail fireworks in the public display and retail rules. Changes are being made to 837-012-0555(4) to add and delete wording to be consistent with retail fireworks rules.
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: Adopts and amends rules relating to the regulation

of private and provisional investigators in Oregon.

Date:	Time:	Location:
2-27-06	1 p.m.	550 N. Monmouth Ave. Monmouth OR 97361

Hearing Officer: Bonnie Salle
Stat. Auth.: ORS 703.415, 703.425, 703.430, 703.435, 703.445, 703.450, 703.460, 703.465 & 703.480
Stats. Implemented: ORS 703.401 - 703.490 & 703.995
Proposed Adoptions: 259-061-0005, 259-061-0010, 259-061-0015, 259-061-0020, 259-061-0030, 259-061-0040, 259-061-0050, 259-061-0055, 259-061-0060, 259-061-0070, 259-061-0080, 259-061-0090, 259-061-0095, 259-061-0100, 259-061-0110, 259-061-0120, 259-061-0130, 259-061-0140, 259-061-0150, 259-061-0160, 259-061-0170, 259-061-0180, 259-061-0190, 259-061-0200, 259-061-0210, 259-061-0220, 259-061-0230, 259-061-0240, 259-061-0250, 259-061-0260
Proposed Repeals: Rules in 220-001, 220-005, 220-010, 220-030, 220-040, 220-050
Last Date for Comment: 2-27-06, 4 p.m.
Summary: Adopts and amends rule relating to the regulation of private investigators and provisional investigators who conduct business in the state of Oregon. The Oregon State Legislature mandated that the former Oregon Board of Investigators be dissolved and all licensed investigators be regulated by the Department of Public Safety Standards and Training.

**NOTICE: Please allow sufficient time for obtaining a parking pass and visitor badge if submitting personal testimony at public hearing. Please check in with reception for room location, parking pass and visitor badge.

Rules Coordinator: Bonnie Salle
Address: 550 N. Monmouth Ave., Monmouth OR 97361
Telephone: (503) 378-2431

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Rule Caption: Expand College Education Credits utilized for certification to include distance learning education.
Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Proposed Amendments: 259-008-0045
Last Date for Comment: 2-23-06, 5 p.m.
Summary: Amends current rule language which limited educational credits for upper levels of certification to include distance learning education courses from a degree-granting college or university recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.594(2) or a community colleges, a college or university whose coursework or degree has been accepted for credit by a degree granting community college, college or university accredited by a recognized national or regional accrediting body.
Rules Coordinator: Bonnie Salle
Address: 550 N. Monmouth Ave., Monmouth OR 97361
Telephone: (503) 378-2431

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Rule Caption: Amends requirement for physical examinations
Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Proposed Amendments: 259-008-0010
Last Date for Comment: 2-27-06, 5 p.m.
Summary: Amends current medical examination requirements for law enforcement officers who change employers or terminate employment but are re-employed prior to their certification lapsing. Creates new provision for hiring agency discretion in certain instances.
Rules Coordinator: Bonnie Salle
Address: 550 N. Monmouth Ave., Monmouth OR 97361
Telephone: (503) 378-2431

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

Rule Caption: Requires that all testing for Commercial Driver Licenses and endorsements be conducted in English.

Date:	Time:	Location:
2-16-06	9 a.m.	ODOT Bldg., Rm. 122 355 Capitol St. NE Salem, OR 97301

Hearing Officer: Liz Woods
Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.045, 807.050, 807.070, 807.080, 807.120 & 807.170
Stats. Implemented: ORS 807.031, 807.040, 807.045, 807.070, 807.100 & 807.120
Proposed Amendments: 735-060-0110, 735-060-0120, 735-062-0075
Last Date for Comment: 2-21-06
Summary: DMV currently offers the knowledge test for a Commercial Driver License (CDL) in English and Spanish and allows the drive test to be conducted in other languages. ODOT has adopted the federal Motor Carrier Safety Administration regulations which establish the qualifications for drivers of commercial motor vehicles, including the requirement that a driver must "read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records." 49 CFR § 391.11. Consistent with this qualification requirement, DMV proposes to amend OAR 735-062-0075 to include a provision that all knowledge and skills tests given for a commercial driver license or endorsement must be offered and conducted only in the English language. OAR 735-060-0120 establishes requirements for third party testing. DMV proposes to amend OAR 735-060-0120 to require that a CDL Third Party Examiner conduct both the pre-trip inspection test and the on-road drive test only in English and OAR 735-060-0110 Table 2 to include a sanction for any violation of this requirement.

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

Rules Coordinator: Brenda Trump
Address: Department of Transportation, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314
Telephone: (503) 945-5278

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Rule Caption: Adopts and Amends Rules Regarding the Regulation of Vehicle Dismantlers; Repeals Rules No Longer Needed.

Date:	Time:	Location:
3-30-06	10 a.m.	ODOT Bldg., Rm. 122 355 Capitol NE Salem, OR 97301

Hearing Officer: David Eyerly
Stat. Auth.: ORS 183.415, 183.430, 183.450, 184.616, 184.619, 801.402, 802.010, 802.200, 803.012, 803.015, 803.045, 803.050 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, 803.126, 803.140, 803.207, 803.210, 803.370, 803.380, 803.475, 805.120, 815.405, 819.010-.030, 819.110, 819.140, 819.215, 819.220, 821.060, 821.080, 822.035, 822.100-.145 & Ch. 654, OL 2005 (HB 2429), Ch. 514, OL 2005 (HB 2507) & Ch. 738, OL 2005 (HB 3121)
Stats. Implemented: ORS 183.415, 183.430, 183.450, 801.402, 802.370, 803.015, 803.045, 803.050, 803.097, 803.102, 803.120, 803.124, 803.140, 803.420, 809.080, 809.110, 815.425, 819.010, -.040, 819.215, 819.220, 822.005-.080, 822.115-.145, 49 CFR Part 580 & Ch. 654, OL 2005 (HB 2429), Ch. 514, OL 2005 (HB 2507) & Ch. 738, OL 2005 (HB 3121)
Proposed Adoptions: 735-024-0077, 735-152-0025, 735-152-0031, 735-152-0034, 735-152-0037, 735-152-0045, 735-152-0060, 735-152-0070, 735-152-0080, 735-152-0090

Proposed Amendments: 735-001-0040, 735-020-0010, 735-020-0070, 735-022-0000, 735-024-0015, 735-024-0030, 735-024-0070, 735-024-0075, 735-024-0080, 735-024-0120, 735-024-0130, 735-024-0170, 735-028-0010, 735-028-0090, 735-028-0110, 735-032-0020, 735-150-0005, 735-150-0010, 735-152-0000, 735-152-0005, 735-152-0010, 735-152-0020, 735-152-0040, 735-152-0050
Proposed Repeals: 735-046-0080, 735-152-0030
Last Date for Comment: 3-31-06
Summary: Chapter 654, Oregon Laws 2005 (HB 2429), relating to motor vehicle dismantlers (formerly vehicle wreckers), creates new business requirements, new definitions and grants DMV additional regulatory authority to impose sanctions and civil penalties against vehicle dismantlers found in violation of applicable laws and rules. The rulemaking clarifies dismantler business requirements including record keeping and requirements for reporting business activities to DMV. The rules also establish new violations, sanctions and civil penalties that DMV may assess dismantlers found in violation of applicable laws and DMV rules. Finally, the term "vehicle wrecker" is replaced with "dismantler" in all DMV rules. OAR 735-152-0030 is being repealed because it has been incorporated into the OAR 735-152-0050 amendments.

Chapter 514, Oregon Laws 2005 (HB 2507), requires vehicle air bags containing sodium azide to be removed from a subject vehicle before it is wrecked or dismantled. It also requires sodium azide air bags be deployed within seven days of removal unless properly stored by a vehicle dealer, automobile repair facility or a certified dismantler. These rules establish violations and civil penalties that DMV may assess dismantlers found in violation of applicable laws and DMV rules regarding sodium azide air bags.

Chapter 738, Oregon Laws 2005 (HB 3121), authorizes city or county authorities to dispose of a vehicle that is located on private property upon request of a person who is both the owner of the property and in legal possession of the vehicle, provided that the vehicle has an appraised value of $500 or less. OAR 735-024-0077 designates the form of notice that must be submitted to DMV by an authority requested to dispose of an abandoned vehicle appraised at a value of $500 or less and abandoned on private property under the provisions of Chapter 738, Oregon Laws 2005 (HB 3121).

OAR 735-046-0080 (Oregon Trail Registration Plate Series) is being repealed because the statutory authority for the rule no longer exists. Finally, The rule changes also update terms and definitions consistent with the legislative amendments and make other non-substantive changes to simplify rule language.

DMV filed temporary rules to become effective January 1, 2006, because there was not sufficient time to complete the permanent rulemaking process to coincide with effective date of Chapter 654, Oregon Laws 2005 (HB 2429), Chapter 514, Oregon Laws 2005 (HB 2507), Chapter 738 and Oregon Laws 2005 (HB 3121), respectively. OAR 735-046-0080 (Oregon Trail Registration Plate Series) was temporarily suspended because the statutory authority for the rule no longer exists. DMV now proposes to file permanent rules to adopt, amend and repeal these rules, respectively.

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,
Motor Carrier Transportation Division
Chapter 740

Rule Caption: Adoption of Federal safety and hazardous materials transportation regulations affecting motor carriers.
Stat. Auth.: ORS 153.022, 823.011, 823.061, 825.137, 825.210, 825.232, 825.252, 825.258 & 825.990
Stats. Implemented: ORS 825.210, 825.250, 825.252, 825.258 & 825.260
Proposed Amendments: 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090, 740-100-0100, 740-110-0010
Last Date for Comment: 2-21-06
Summary: These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Other changes are needed to: incorporate recently enacted federal requirements contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) related to hours of service regulations for utility service vehicle drivers; clarify that Oregon intrastate hours of service requirements apply to certain drivers that operate commercial motor vehicles that do not require the driver to have a Commercial Driver License; provide uniformity; and update form titles. The Maximum Fine Schedule adopted under OAR 740-100-0100 is readopted to reflect current national standards.

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

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Department of Veterans' Affairs
Chapter 274

Rule Caption: New Appropriations Program for Services provided to Veterans.

Date:	**Time:**	**Location:**
2-17-06	1:30 p.m.–3 p.m.	Auditorium, ODVA Bldg. 700 Summer St. NE Salem, OR 97301-1285

Hearing Officer: Herbert D. Riley
Stat. Auth.: ORS 406.030, 406.050, 406.310 - 406.340 & 408.410
Other Auth.: Ch. 793 (SB 5629) & Ch. 836 (SB 1100), OL 2005
Stats. Implemented: ORS 406.030, 406.050, 406.215 & 408.410
Proposed Adoptions: 274-030-0600, 274-030-0605, 274-030-0610, 274-030-0615, 274-030-0620, 274-030-0621, 274-030-0630, 274-030-0640
Proposed Repeals: 274-030-0600(T), 274-030-0605(T), 274-030-0610(T), 274-030-0615(T), 274-030-0620(T), 274-030-0621(T), 274-030-0630(T), 274-030-0640(T)
Last Date for Comment: 2-21-06
Summary: This rule replaces and supersedes the Temporary OAR filed on December 22, 2005 and effective December 23, 2005 through June 21, 2006.

The 73rd Oregon Legislative Assemble-2005 Regular Session passed Senate Bill (SB) 5629 which appropriated funds to be expended for purposes described in SB 1100 which mandates that the Director of Veterans' Affairs adopt rules to establish a program to enhance and expand the services provided by county veterans' service officers. These rules are to include the development and implementation of a distribution formula, and to establish the requirements for reporting and data collection.
Rules Coordinator: Herbert D. Riley
Address: Department of Veterans' Affairs, 700 Summer St. NE, Salem, OR 97301-1285
Telephone: (503) 373-2055

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Employment Department
Chapter 471

Rule Caption: Interpretation for Limited English Proficient Persons and Interpretation for Individuals with a Disability.

Date:	**Time:**	**Location:**
2-15-06	2 p.m.	Employment Dept. Auditorium Salem, OR

Hearing Officer: Lynn Nelson
Stat. Auth.: ORS 657
Stats. Implemented: ORS 45.272 - 292
Proposed Adoptions: 471-040-0007, 471-040-0008
Last Date for Comment: 2-15-06, 5 p.m.
Summary: These rule changes are being made to insure that limited English proficient customers and those with physical barriers obtain a fair hearing.
Rules Coordinator: Lynn M. Nelson
Address: Employment Department, 875 Union St. NE, Salem, OR 97311
Telephone: (503) 947-1724

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Health Licensing Office,
Board of Cosmetology
Chapter 817

Rule Caption: Reinstates paper inspection certificate; synchronizes Division 090 rules with agency authority.
Stat. Auth.: OL 2005, Ch. 648, ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205 & 690.995
Other Auth.: ORS 676.605
Stats. Implemented: OL 2005, Ch. 648, ORS 676.605, 676.615, 676.992, 690.165, 690.167, 690.205 & 690.995
Proposed Amendments: 817-035-0110, 817-090-0055, 817-090-0065, 817-090-0070, 817-090-0075, 817-090-0080, 817-090-0085, 817-090-0090, 817-090-0095, 817-090-0100, 817-090-0110, 817-090-0115
Last Date for Comment: 2-28-06
Summary: Division 035 amendments reinstates issuance of a paper inspection certificate to cosmetology facilities and independent contractors following an on-site visit by the agency's enforcement officer as a means of documenting the inspection for compliance with licensing, safety and infection control regulations. The agency's migration to a paperless/electronic inspection system did not provide a "record" of the inspection for the licensee to retain. The inspection certificate is not required to be posted in public view but must be available on the premises for review upon agency request.

Division 090 amendments conform all Civil Penalty rule provisions with the agency name change resulting from passage of HB 2103 by the 2005 Legislature (Oregon Health Licensing Agency) and identifies agency authority to assess civil penalties under ORS 676.992 resulting from passage of HB 2325 by the 2003 Legislature.
Address: Health Licensing Office, Board of Cosmotology, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287
Rules Coordinator: Patricia C. Allbritton
Telephone: (503) 378-8667, ext. 4322

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Insurance Pool Governing Board
Chapter 442

Rule Caption: Clarifying FHIAP requirements and implementing SB 303 (2005) and HB 2064 (2005).
Stat. Auth.: ORS 735.734
Other Auth.: SB 303 & HB 2064
Stats. Implemented: ORS 735.720 - 735.740
Proposed Adoptions: Rules in 442-005
Proposed Repeals: Rules in 442-004
Last Date for Comment: 2-22-06
Summary: This amended Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact is being filed under ORS 183.335(12) to show all changes to the rules by striking through material to be deleted and underlining all new material. Please refer below as to where a copy of the rules may be obtained."

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

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

The rules are available on the FHIAP website at http://egov.oregon.gov/IPGB/FHIAP/index.shtml. The drafts will be updated weekly until the effective date. Anyone who would like a set of the drafted rules mailed to them may contact Nicole Shuba at 503-378-4676, or 1-888-564-9669 x84676.
Rules Coordinator: Nicole Shuba
Address: Insurance Pool Governing Board, 250 Church St. SE, Ste. 200, Salem, OR 97301
Telephone: (503) 378-4676

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Oregon Board of Dentistry
Chapter 818

Rule Caption: Creates or amends rules regarding Specialties, Advertising, Unprofessional Conduct, Certification, Dental Assistants, Licensing, and Anesthesia.

Date:	Time:	Location:
3-9-06	7 p.m.	OHSU School of Dentistry 611 SW Campus Dr. Rms. 220 & 225 Portland, OR

Hearing Officer: Board President or Designee
Stat. Auth.: ORS 679 & 680.
Stats. Implemented: ORS 679.010, 679.025, 679.060, 679.140, 679.170, 679.250, 680.010 & 680.050
Proposed Adoptions: 818-021-0026
Proposed Amendments: 818-001-0002, 818-012-0030, 818-015-0007, 818-021-0011, 818-021-0012, 818-021-0025, 818-026-0080, 818-042-0115, 818-042-0116, 818-042-0117
Last Date for Comment: 3-9-06
Summary: The Board is amending 818-001-0002, Definitions, to include the definition of Oral and Maxillofacial Radiology as a specialty.

The Board is amending 818-012-0030, Unprofessional Conduct regarding sexual misconduct.

The Board is amending 818-015-0007, Specialty Advertising, to include Oral and Maxillofacial Radiology as a specialty for advertising purposes.

The Board is amending 818-021-0011, Application for License to Practice Dentistry Without Further Examination, to eliminate the rule regarding background checks.

The Board is amending 818-021-0012, Specialties Recognized, to add Oral and Maxillofacial Radiology as a specialty of the Board.

The Board is amending 818-021-0025, Application for License to Practice Dental Hygiene Without Further Examination, to eliminate the rule regarding background checks.

The Board is adopting 818-021-0026, State and Nationwide Criminal Background Checks, Fitness Determinations, to bring the Board's rules into compliance with the new law (HB2157) that will allow for nationwide criminal background checks on all applicants and also licensees who may be under Board investigation.

The Board is amending 818-026-0080, Standards Applicable when a Dentist Performs Dental Procedures and a Qualified Provider Induces Anesthesia, to allow a dentist who does not hold a Class 1 (Nitrous Oxide) Anesthesia Permit to perform dental procedures on

a patient who receives anesthesia induced by a dental hygienist who holds a Class 1 (Nitrous Oxide) Anesthesia Permit.

The Board is amending 818-042-0115, Expanded Functions — Oral Surgery Assistant, to change the name to Certified Anesthesia Assistant.

The Board is amending 818-042-0116, Certification — Oral Surgery Assistant, to change the name to Anesthesia Assistant.

The Board is amending 818-042-0117, Initiation of IV Line, to change Oral Surgery Assistant to Anesthesia Assistant.

Copies of the full text of proposed changes can be found on the Board's Web site (www.oregon.gov/dentistry) under "NEW" or by calling the Board of Dentistry at (503) 229-5520.

Rules Coordinator: Sharon Ingram
Address: Oregon Board of Dentistry, 1600 SW 4th Ave., Suite 770, Portland, OR 97201
Telephone: (503) 229-5520

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Oregon Commission on Children and Families
Chapter 423

Rule Caption: Relief Nurseries — requirements of programs, including staffing and client services; and process for funding.

Date:	Time:	Location:
3-20-06	10 a.m.	530 Center St. Suite 405 Salem, OR

Hearing Officer: Barbara Carranza
Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Proposed Adoptions: 423-045-0101, 423-045-0105, 423-045-0110, 423-045-0115, 423-045-0120, 423-045-0125, 423-045-0130, 423-045-0135, 423-045-0140, 423-045-0145, 423-045-0150, 423-045-0155, 423-045-0160, 423-045-0165, 423-045-0170, 423-045-0175, 423-045-0180, 423-045-0185
Proposed Amendments: 423-010-0024
Last Date for Comment: 4-14-06
Summary: These administrative rules establish prerequisites for operation and funding of Relief Nurseries. The rules establish minimum services, infrastructure, staffing, curriculum, staff training and supervision. The rules also include recommended and optional services of Relief Nurseries.
Rules Coordinator: Marsha Clark
Address: Oregon Commission on Children and Families, 530 Center St. NE, Suite 405, Salem, OR 97301
Telephone: (503) 373-1570, ext. 244

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Oregon Department of Education
Chapter 581

Rule Caption: Develop an OAR to address staff training and policies regarding physical restraint.

Date:	Time:	Location:
2-15-06	1 p.m.	255 Capitol St. NE Rm. 251-A Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 339.250
Proposed Adoptions: 581-021-0062
Proposed Amendments: 581-021-0061
Last Date for Comment: 2-15-06
Summary: On January 27, 2004, ODE issued a policy memorandum regarding the use of physical restraint practices in Oregon schools. ODE sought input on a number of policy questions. ODE received responses from a number of professionals, advocates and others who expressed an interest in a policy forum on the topic. In response, on May 13, 2004, ODE held a forum on Physical Restraint in Oregon Schools. About 40 people attended the policy forum, including special education directors, special education teachers or providers, and others. Following the recommendations of the working groups, ODE continued to work with the State Advisory Council for Special Education (SACSE), the Oregon Advocacy Center, and other stakeholders to develop an administrative rule that would address the need for staff training and written policies on the use of physical restraint to ensure staff and student safety.

If you have a question regarding these rules, please contact Suzy Harris at (503) 378-3600 X2333 or e-mail suzy.harris@state.or.us

For a copy of this rule, please contact Debby Ryan at (503) 378-3600, X2348 or e-mail debby.ryan@state.or.us

Rules Coordinator: Debby Ryan
Address: Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203
Telephone: (503) 378-3600, ext. 2348

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Defining and calculating final average salary and defining salary.

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

Hearing Officer: David K. Martin
Stat. Auth.: ORS 238.650, 237 & 238A.450
Stats. Implemented: ORS 238, OL 2005 Ch. 332, Ch. 808, OL 2003 Ch. 733 & ORS 238A.330
Proposed Amendments: 459-005-0001, 459-075-0030, 459-080-0150
Proposed Repeals: 459-010-0040
Last Date for Comment: 3-10-06
Summary: 2005 HB 2189 and 3262 (Oregon Laws 2005 chapters 332 and 808, respectively) modified provisions relating to the definition and calculation of Final Average Salary and the definition of salary for the purpose of determining contributions to the IAP.

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

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

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Rule Caption: Amend Designation of Beneficiary rule to comply with statutory changes and reflect current PERS practices.

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

Hearing Officer: David K. Martin
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.390
Proposed Amendments: 459-014-0030
Last Date for Comment: 3-10-06
Summary: Update the PERS Designation of Beneficiary rule to comply with statutory changes and to reflect current PERS practices.

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

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

Oregon State Lottery
Chapter 177

Rule Caption: Operating Rules for Lucky Lines, a new Lottery game.
Stat. Auth.: ORS 461
Other Auth.: OR Const., Art. XV, §4(4)
Stats. Implemented: ORS 461.210
Proposed Adoptions: 177-083-0000, 177-083-0010, 177-083-0020, 177-083-0030, 177-083-0040, 177-083-0050, 177-083-0060, 177-083-0070
Last Date for Comment: 2-22-06, 9 a.m.
Summary: The proposed rules authorize a new On-Line game for the Oregon Lottery, Lucky Lines, and provide the rules for how it is played.
Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

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Oregon State Marine Board
Chapter 250

Rule Caption: Consideration of allowing electric motors on lakes previously prohibited from motor boat operation.

Date:	Time:	Location:
2-16-06	7 p.m.	Chemeketa Community College Bldg. 50, Rm. 111 Salem, OR

Hearing Officer: Randy H. Henry
Stat. Auth.: 830.110 & 830.175
Stats. Implemented: 830.110 & 830.175
Proposed Amendments: 250-020-0102, 250-020-0125, 250-020-0132, 250-020-0141, 250-020-0161, 250-020-0240, 250-020-0266, 250-020-0280, 250-020-0330, 250-020-0350
Last Date for Comment: 2-28-06, 12 p.m.
Summary: 250-020-0102 Allow electric motor on boats operating on Hemlock Lake in Douglas County; 250-020-0125 Allow electric motor on boats operating on Bull Prairie Reservoir in Grant County; 250-020-0132 Allow electric motor on boats operating in Fish Lake in Harney County; 250-020-0141 Allow electric motor on boats operating on Badger Lake in Hood River County; 250-020-0161 Allow electric motor on boats operating on Hand, Island and Round lakes in Jefferson County; 250-020-0240 Allow electric motor on boats operating in Carmen Reservoir in Linn County; 250-020-0280 Allow electric motor on boats operating on Benson Lake in Multnomah County; 250-020-0330 Allow electric motor on boats operating on Mud Lake in Union County; 250-020-0350 Allow electric motor on boats operating on Rock Creek Reservoir in Wasco County
Rules Coordinator: Jill E. Andrick
Address: PO Box 14145, Salem OR 97309-5065
Telephone: (503) 378-2617

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Rule Caption: Establish 5 mph/slow no wake on Petric Park Canal, Agency Lake, Klamath County.
Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830
Proposed Amendments: 250-020-0204
Last Date for Comment: 2-28-06, 5 p.m.
Summary: The Marine Board, meeting December 14, 2005 in Salem, accepted a petition requesting a 5 mph/slow no wake zone on the canal that connects the Petric Park boat ramp to the Wood River on the north end of Agency Lake in Klamath County.
Rules Coordinator: Jill E. Andrick
Address: P.O. Box 14145, Salem, OR 97309-5065
Telephone: (503) 378-2617

Oregon Student Assistance Commission
Chapter 575

Rule Caption: Criminal Records Checks.

Date:	Time:	Location:
3-17-06	9:30 a.m.	1600 Valley River Dr. Suite 310 Eugene, OR

Hearing Officer: Dean Wendle
Stat. Auth.: ORS 348 & 730 (2005 OL)
Other Auth.: HB 2157 (2005 OL)
Stats. Implemented: ORS 730 (2005 OL)
Proposed Adoptions: Rules in 575-007
Last Date for Comment: 3-17-06
Summary: 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 D. Cooksey
Address: Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401
Telephone: (541) 687-7370

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Oregon University System,
Portland State University
Chapter 577

Date:	Time:	Location:
2-24-06	2–4 p.m.	Cramer Hall, Rm. 307 Portland, OR

Hearing Officer: Jeremy Dalton
Stat. Auth.: ORS 351.070 & 351.088
Stats. Implemented: ORS 351.070 & 351.088
Proposed Amendments: 577-031-0131
Last Date for Comment: 3-3-06
Summary: Amends the Student Conduct Code definition provisions to provide that where a student conduct proceeding has been initiated by notice or by interim suspension prior to the expiration of the six month period after date of last enrollment, registration or recognition, those proceedings may be noticed and may proceed until concluded. Applies retroactively.
Rules Coordinator: Jeremy Randall Dalton
Address: Oregon University System, Portland State University, Portland State University, PO Box 751, Portland, OR 97207
Telephone: (503) 725-3443

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Oregon University System,
University of Oregon
Chapter 571

Rule Caption: Amend special fees, fines, penalties and service charges.

Date:	Time:	Location:
3-14-06	3 p.m.	Alsea Rm., EMU University of Oregon Eugene, OR

Hearing Officer: Laura Hubbard
Stat. Auth.: ORS 351.070, 351 & 352
Stats. Implemented: ORS 351.070
Proposed Amendments: 571-060-0005
Last Date for Comment: 3-15-06, 12 p.m.
Summary: The University administration has determined that the adoption of the amendments to the fee list will be necessary in order to provide the basis for funding to cover the expenses of the services rendered and to maintain a current schedule of fees, fines, and penalties.

Rules Coordinator: Connie Tapp
Address: Oregon University System, University of Oregon, 1226 University of Oregon, Eugene, OR 97403
Telephone: (541) 346-3082

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Oregon University System,
Western Oregon University
Chapter 574

Rule Caption: Revisions to special course fees, general services fees and procedural rules.
Stat. Auth.: ORS 351.070 & 351.072
Stats. Implemented: ORS 351.070 & 351.072
Proposed Amendments: 574-001-0000, 574-050-0005
Last Date for Comment: 2-22-06
Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees and include notification to Western Oregon University's Staff Senate President.
Rules Coordinator: Debra L. Charlton
Address: Oregon State System of Higher Education, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361
Telephone: (503) 838-8175

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Water Resources Department
Chapter 690

Rule Caption: Requirement for Pump Testing of Nonexempt Wells.

Date:	Time:	Location:
2-17-06	11:30 a.m.–1 p.m.	OWRD Conf. Rm. 124b 725 Summer St. NE Salem, OR

Hearing Officer: Michael Zwart
Stat. Auth.: ORS 537.772
Stats. Implemented: ORS 537.772
Proposed Amendments: 690-217-0020
Last Date for Comment: 3-10-06, 5 p.m.
Summary: The Water Resources Department is proposing to amend rules related to pump testing of nonexempt wells (OAR Chapter 690, Division 217) to implement changes that would waive the pump test requirement for certain permits and certificates, unless required by the Director. This rulemaking will also reduce the requirements for well owners or operators to conduct follow-up testing of wells, unless required by the Director.
Rules Coordinator: Debbie Colbert
Address: Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301
Telephone: (503) 986-0878

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Rule Caption: Modifies well construction and licensing rules to implement Senate Bill 579 (Chapter 496, Oregon Laws 2001).

Date:	Time:	Location:
2-22-06	8:30–9:30 a.m.	OWRD Conf. Rm. 124A 725 Summer St. NE Salem, OR
2-22-06	6–7 p.m.	OWRD Conf. Rm. 124A 725 Summer St. NE Salem, OR

Hearing Officer: Kris Byrd
Stat. Auth.: ORS 537.780 & 536.027
Stats. Implemented: Ch. 496, OL 2001 (ORS 537.747)
Proposed Amendments: 690-200-0050, 690-205-0005, 690-205-0010, 690-205-0020, 690-205-0025, 690-205-0055, 690-205-0120, 690-205-0145, 690-205-0155, 690-205-0175, 690-205-0185, 690-205-0200, 690-205-0210, 690-220-0030, 690-220-0095, 690-225-0020, 690-225-0030, 690-225-0060, 690-225-0110, 690-240-0005, 690-240-0010, 690-240-0015, 690-240-0035, 690-240-0055, 690-240-0060, 690-240-0065, 690-240-0070, 690-240-0220, 690-240-0280, 690-240-0320, 690-240-0330, 690-240-0340, 690-240-0355, 690-240-0375, 690-240-0395, 690-240-0485, 690-240-0500, 690-240-0510, 690-240-0560, 690-240-0580, 690-240-0610, 690-240-0640
Last Date for Comment: 3-8-06
Summary: The Water Resources Department is proposing to amend rules relating to Water Supply Well Constructor and Monitoring Well Constructor licensing and bonding (OAR Chapter 690, Divisions 200, 205, 220, 225 and 240). In 2001, the Oregon Legislative Assembly passed Senate Bill 579 (Chapter 496, Oregon Laws 2001) which directed the Department to adopt a single Water Well Constructor's License no later than July 1, 2006. The Department currently issues two types of well constructor licenses: one for water supply wells and one for monitoring wells. The proposed rules implement SB 579 by adopting a single license and bonding program instead of the two licenses that the Department currently issues. By adopting a single license the drillers who currently maintain two licenses will only be required to carry a single license with endorsements that indicate what type of wells they are authorized to construct. The single license also means that licensed well constructors that currently maintain two licenses will only be required to pay one license fee instead of two and that they will only be required to have a single bond that will cover work under both license endorsements. Currently if a well constructor chooses to be bonded then a separate bond is required for each of the two license types. A bond is required to advertise services or enter into contracts to construct, alter, deepen, convert or abandon a well for another person.
Rules Coordinator: Debbie Colbert
Address: Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301
Telephone: (503) 986-0878

Board of Clinical Social Workers
Chapter 877

Adm. Order No.: BCSW 2-2005
Filed with Sec. of State: 12-22-2005
Certified to be Effective: 12-22-05
Notice Publication Date: 10-1-05
Rules Adopted: 877-020-0055, 877-030-0100, 877-035-0013
Rules Amended: 877-001-0000, 877-010-0025, 877-020-0000, 877-020-0009, 877-020-0010, 877-020-0012, 877-020-0013, 877-020-0015, 877-020-0016, 877-020-0020, 877-020-0030, 877-020-0031, 877-020-0046, 877-025-0000, 877-025-0005, 877-030-0040, 877-030-0050, 877-030-0070, 877-030-0090, 877-035-0012, 877-035-0015, 877-040-0015, 877-040-0050, 877-040-0055
Rules Repealed: 877-020-0050, 877-040-0025, 877-040-0027, 877-040-0060, 877-040-0065, 877-040-0070
Subject: These changes accomplish the following: (1) Switch from a licensure renewal process at the end of the calendar year, to one connected with the licensee's birth-month; (2) Establish limits on how long a Candidate has to pass the prescribed licensure exams; (3) Fee increase for LCSW and CSWA annual renewal; (4) Decreases renewal fee for those on Inactive Status; (5) Establishes CE requirements for those returning to Active Status after time on Inactive Status; (6) Sets protocol for safety of clinical records in event of licensee's death or impairment; (7) Allows the Board to require national FBI fingerprint background check for Applicants and other specific categories; and (8) Shortens time-line for self-reporting of DUII or other substance abuses.
Rules Coordinator: Jon F. Langenwalter—(503) 378-5735

877-001-0000
Providing Notice of Rule Adoption

Prior to adoption, amendment, or repeal of any Rule, the State Board of Clinical Social Workers shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.

(2) By furnishing a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule.

(3) By furnishing a copy of the notice to:

(a) The United Press International;

(b) The Associated Press;

(c) The Oregon Chapter of the National Association of Social Workers.

Stat. Auth.: ORS 183 & 675.510 - 675.600
Stats. Implemented: ORS 183.335
Hist.: BCSW 1-1980, f. & ef. 8-27-80; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 2-2005, f. & cert. ef. 12-22-05

877-010-0025
Board Files

All Board files shall be retained in the Board's official office. The Board Administrator shall maintain a master record of any files which are checked out of the Board office by Board members. The Board Administrator shall be notified whenever any Board file is transferred from the possession of one person to another, and shall so note in the Board's records. Individuals who have in their possession documents or files pertaining to Board affairs are responsible for their protection and privacy. Board files shall be retained for a period of seven years after the lapse of a license.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.590
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0000
Definitions

(1) Persons represent themselves to be Licensed Clinical Social Workers within the meaning of this Act if they state or imply they are Licensed Clinical Social Workers, or use the letters LCSW as part of their professional identification in conjunction with their name.

(2) The term "Licensed Clinical Social Worker" includes acts or behaviors within the purview of the practice of Clinical Social Work as defined in Chapter 675, Oregon Laws, 1979.

(3) The term "Clinical Social Work Associate" means a person who holds a master's degree from a college or university accredited by an accrediting body recognized by the Board, whose Plan of practice and supervision has been approved by the Board, and who is working toward licensure in accordance with ORS 675.510 to 675.600 and Rules adopted by the Board and includes any person who has completed a Plan of practice and supervision, but who has not yet completed the licensing requirements of OAR 877-020-0008.

(4) The term "Independent Practice of Social Work" is defined as that practice in which an individual who, wholly or in part, practices social work autonomously, with responsibility for his/her own practice and sets up his/her own contractual conditions of payment with the client, agency, or institution.

(5) "Full-time Clinical Social Work Practice" is defined as a minimum of 20 hours face-to-face contact with clients per week. Report writing, charting, written evaluations, telephone conversations, collateral contacts, and supervision, etc., are in addition to the 20 hours.

(6) "Agency" is defined as a setting providing clinical social work services as defined in ORS 675-510(2)(a) through (c) where cases are assigned by a central intake person or process; billing is centralized and done in the agency's name; the agency collects all fees including deductibles and co-payments; the agency controls clinical records including storage and destruction of clinical records; the agency controls office space by renting, owning, or leasing it; the agency displays its name on the premises so as to be clearly visible to clients; the agency name is on all forms given to the client; the agency maintains the responsibilities of hiring and firing of staff; the agency pays the staff for clinical services; supervision is provided on a regular basis; evaluation of a social worker's competence is provided on a regular basis; and policies and procedures are available in written form for the staff and clients.

(7) "Client" is defined as anyone who consents to evaluation and/or treatment from a Clinical Social Work Associate or a Licensed Clinical Social Worker or a person to whom the Clinical Social Worker has at anytime within the previous three years rendered clinical social work practice.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0009
Requirements for Certificate of Clinical Social Work Associate

Upon application and payment of the required fee, the Board shall issue a Certificate of Clinical Social Work Associate to any applicant who furnishes evidence satisfactory to the Board that the applicant:

(1) Holds a master's degree in social work from a college or university accredited by a credentialing body recognized by the Board.

(2) Has developed a Plan of Supervision approved by the Board for completion of the practice and supervision requirements. The two-year requirement begins at the time the Plan is approved by the Board.

(3) The Board may refuse to renew the Certificate of any Clinical Social Work Associate who fails to file the required forms in a timely manner.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.537
Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0010
Practice Requirements for Certificate of Clinical Social Work Associate

(1) Clinical social work practice acceptable to the Board to meet certification requirements for Certificate of Clinical Social Work Associate shall consist of direct face-to-face contact with clients and the application of psycho-social principles and methods with individuals, couples, families, children, and groups, as defined in ORS 675.510(2)(a–e).

(2) Completion of Certificate of Clinical Social Work Associate requires a minimum of 3,500 practice hours of which at least 2,000 must be client contact hours post-masters supervised clinical social work practice to be completed in a minimum of two years or a maximum of five years unless an extension is granted by the Board. The Board may accept previous supervised clinical practice as part of a Supervised Plan.

(a) Independent practice hours will be allowed to fulfill practice requirements in the certification process if applicant can document previous post-masters clinical practice of at least 3,500 supervised practice hours of which at least 2,000 must be client contact hours in a private or public agency.

(b) Volunteer clinical social work may satisfy this requirement.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.537
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91;

BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0012
Supervision Requirements

(1) Requirements consist of a minimum of 100 hours of clinical supervision. Documentation of the dates and content of supervision meetings may be required by the Board in order to verify that requirements for appropriate supervision have been met.

(2) All supervision must take place concurrently with practice hours.

(3) At all times ethical behavior must be a significant consideration in supervision. The relationship between the supervisor and the applicant is to be of a professional nature with professional ethical standards applying. The Supervisor is not to exploit the relationship with the Applicant for personal advantage and shall avoid a dual relationship or one which might impair professional judgment or increase risk of exploitation. This requirement specifically excludes family members from providing supervision.

(4) The Board views the supervision requirement as a professional relationship between a Board-approved qualified Supervisor and an Associate. Supervisors in contrast to consultants, carry the authority to direct caseload and treatment plans. Supervision, in contrast to treatment, will identify counter-transference issues and develop a plan for the Associate to work through those issues independently.

(5) In order to fully meet the supervision requirements, discussion between the Supervisor and Associate are based on case notes, charts, records, and available audio or visual tapes of clients. Associates present assessments, diagnoses, and treatment plans of clients being seen. The focus is on the appropriateness of these treatment plans and the supervisee's therapeutic skill in promoting change in the client. The Supervisor has the authority to decide the appropriateness of the Associate's client population to the Associate's level of expertise.

(6) The Board values an ongoing long-term relationship between the Associate and Supervisor. Weekly supervision meetings are encouraged. The following are limits to the Supervision Plan:

(a) All supervision must be face-to-face in a professional setting.

(b) A minimum of two meetings per month with the same Supervisor.

(c) A minimum of one hour for each session.

(d) A minimum of six months with one Supervisor.

(e) The Applicant takes full responsibility for ensuring client confidentiality as required in OAR 877-030-0070(14).

(7) Up to 50 hours of the 100 hour supervisory requirement may be met by group supervision based on the following criteria:

(a) The supervision meets all the criteria of 877-20-0012(6)(a–e), as stated above;

(b) Associate for licensure participates in a group organized and led by a Supervisor who is an LCSW;

(c) Leadership in the group may not shift from one Supervisor to another;

(d) The applicant participates in a group which has no more than five supervisees at one time;

(e) Group supervision requirements may not be met by staff or team meetings; administration; support, reading, or discussion groups; intensive long- or short-term training seminars; consultation, continuing education, quality assurance, or peer review groups.

(8) Supervision must be provided by an Oregon LCSW. The only exception the Board may consider would be based on a geographic hardship, where there is no LCSW within a 50-mile radius. For this exception, professionals who may be considered by the Board as meeting equivalent qualifications include clinical social workers who meet LCSW requirements, Licensed Clinical Psychologists, or Board Certified Psychiatrists. This exception to supervision by a non-Oregon LCSW must be justified to the Board and receive its approval.

(9) All prospective LCSW supervisors described in the Plan submitted to the Board for approval must have completed at least two years post-LCSW practice experience. In addition, prospective Supervisors must have completed and documented at least six hours of formal continuing education hours in the areas of ethics, techniques of supervision, confidentiality, and other topics related to supervision, within the five years preceding the assumption of an Associate's supervision plan. Documentation may be requested. If documentation is requested, it may be in the form of copies of continuing education certificates or copies of previous Continuing Education Reports from earlier years. The continuing education requirement must be met prior to being approved as a Supervisor in a Plan of Supervision.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.537
Hist.: BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0013
Plan of Supervision

All Clinical Social Work Associates must have an approved Plan of Supervision.

(1) The Plan of Supervision will include, but is not limited to, the following: identifying information for the Applicant and Supervisor(s); hours of individual and group supervision; frequency of meetings; description of supervision; location of supervision; financial arrangements; certification that all parities understand the responsibilities regarding clinical supervision; and signatures of all parties.

(a) Unless otherwise allowed by the Board, a Plan of Supervision begins when approved by the Board and must be completed within five years from the beginning of the Plan date.

(b) Applicants for a Certificate of Clinical Social Work Associate must have a Plan of Supervision approved by the Plan Supervisor, the Administrator of the Agency, the Applicant, and the Board.

(2) Applicants for Certificate of Clinical Social Work Associate meeting the requirement of OAR 877-020-0010(2)(a) using independent practice hours to meet the requirements for Certificate of Clinical Social Work Associate must have a Plan of Supervision approved by the Plan Supervisor, the Applicant, and the Board. The Plan must allow the Plan Supervisor the following powers:

(a) Review of all case records, billings, appointment book, and client population.

(b) Authority to review and determine appropriate individual charts, and case records.

(c) Authority to direct the Clinical Social Work Associate to refer inappropriate clients to other therapists.

(d) Authority to determine appropriate client populations to be served by the Clinical Social Work Associate.

(e) Authority to report to the Board and the Associate written evaluation of supervision every six months and at the conclusion of the Plan. The Supervisor may report to the Board as deemed necessary.

(3) Any modification of the Associate's Plan must have prior Board approval.

(4) Every six months, Certified Clinical Social Work Associates under a Plan of Supervision are responsible for filing their Plan Supervisor's evaluation of progress toward completion of their Plan. The evaluation must be submitted on a form provided by the Board.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.537
Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 3-1990(Temp), f. & cert. ef. 10-15-90; BCSW 1-1991, f. & cert. ef. 3-15-91; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0015
Evidence of Qualification

The State Board of Clinical Social Workers shall accept as evidence of qualification for Licensed Clinical Social Worker:

(1) A certified transcript from a school of social work accredited by a credentialing body approved by the Board which shows that a masters degree has been granted to the applicant; and

(2) Verification from the Supervisor that the Applicant has completed the Plan of Practice and supervision requirements as stated in OAR 877-020-0009, 877-020-0010, and 877-020-0012 for certification as a Clinical Social Work Associate.

(3) In lieu of sections (1) and (2) of this Rule, evidence that the Applicant is Licensed, Certified, or Registered as a clinical social worker in another state which has requirements equivalent to those adopted in Oregon. Such evidence must be in the form of a document which proves to the Board the Applicant meets the Oregon education, practice, and supervision requirements as stated in OAR 877-020-0009, 877-020-0010, and 877-020-0012. The Applicant must take and pass the Oregon examination for licensure. The decision whether the Applicant meets Oregon's education, practice, and supervision requirements remain with the Board and not with that of the agency in the other state.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.535
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0016
Applicants for Licensure

After completing an approved Plan of Supervision, but before being Licensed, Clinical Social Work Associates may continue without a Plan of Supervision so long as they meet all requirements for licensure except the examination required by OAR 877-020-0008.

(1) Clinical Social Work Associates must take the examination with-

in six months after completing an approved Plan of Supervision. Upon receipt of a written request, the Board may grant an extension to the six-month requirement.

(2) Applicants may retake the examination. They must take the examination within the next six months if they fail the examination. An applicant who has failed the examination two times must petition the Board to retake the examination.

(3) If the Clinical Social Work Associate has not successfully passed the examination within 12 months of completing an approved Plan of supervision, the Clinical Social Work Associate shall submit a revised Plan of Supervision to the Board for approval.

(4) Those Clinical Social Work Associates who do not pass the examination within two years of completing their original Plan of Supervision must start over with a new Plan of Supervision approved by the Board.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.535(4)
Hist.: BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1998, f. & cert. ef. 9-14-98; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0020
Fees for Associate Certification and Licensing

The Board shall collect the following fees for application, certification, licensing, annual renewal of Certificates and Licenses, and delinquent renewal fees. Applicants for licensing shall pay a fee for the written examination to the organization that administers the examination.

(1) The application fee for Certificates and Licenses shall be $100.

(2) The fee for initial certification as a Clinical Social Work Associate shall be determined based on an annual fee of $48, prorated for the length of time of the first Certificate.

(3) The fee for annual renewal of the Associate Certificate shall be $60. For renewals filed and accepted by the Board from October 1, 2005 to March 31, 2006, the fee for this Certificate shall be prorated based on the renewal period being for other than one year.

(4) The fee for initial licensing as a Licensed Clinical Social Worker shall be determined based on an annual fee of $66, prorated for the length of time of the first License.

(5) The fee for annual renewal of a License shall be $90. For renewals filed and accepted by the Board from October 1, 2005 to March 31, 2006, the fee for this License shall be prorated based on the renewal period being for other than one year.

(6) The annual renewal fee for Inactive Status shall be $48. If a person returns to Active Status they shall pay the prorated difference between the Inactive and Active renewal fees.

(7) The Board may impose a delinquent renewal fee of $50 for Certificates and Licenses renewed after January 1, 2006 and prior to March 31, 2006.

(8) After April 1, 2006, the Board may impose a delinquent renewal fee of $50 for each renewal that is not filed with and accepted by the Board by the last day of the licensee's birth month.

(9) All fees under ORS 675.510 through 675.600 and OAR Chapter 877 are non-refundable.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990
Stats. Implemented: ORS 675.571
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1988, f. & cert. ef. 11-15-88; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 2-1999(Temp), f. & cert. ef. 7-1-99 thru 11-1-99; BCSW 3-1999, f. & cert. ef. 10-13-99; BCSW 1-2003(Temp), f. 5-15-03, cert. ef. 7-1-03 thru 12-28-03; BCSW 2-2003, f. 11-21-03, cert. ef. 12-1-03; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0030
Renewal of Certificate and License

(1) Clinical Social Work Associates who have completed a Plan of Supervision must renew their Certificate until licensed under OAR 877-020-0015. Renewal of a Certificate of Clinical Social Work Associate may be obtained:

(a) Upon payment of the appropriate fee.

(b) All evaluation reports are current with the dates of the approved Plan.

(2) Renewal of a License may be obtained:

(a) Upon payment of the appropriate fee and submission of a sworn statement by the licensee, on a form provided by the Board, that the licensee has been actively engaged in clinical social work during the licensing period and that there exists no reason for denial of the renewal.

(b) The Board shall require evidence of continuing education as a requirement for renewal of License in order to ensure the highest quality of professional services to the public.

(3) Prior to April 1, 2006, if a License or Certificate holder has not completed the renewal process by March 31, 2006, the License or Certificate is lapsed and reapplication is necessary.

(4) After April 1, 2006, if a License or Certificate holder has not completed the renewal process within 30 days of the last day of the licensee's birth month, the License or Certificate is lapsed and re-application is necessary.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.560
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06: BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0031
Surrender of License

(1) Voluntary surrender. A Licensed Clinical Social Worker or Clinical Social Work Associate may at anytime voluntarily offer to surrender his or her License or Certificate for any reason.

(a) Surrendered Licenses or Certificates may be delivered to the Board by any method chosen by the Licensed Clinical Social Worker or Clinical Social Work Associate.

(b) If no complaint is pending, the Board may accept the surrender and void the License or Certificate.

(2) Surrender During Disciplinary Action. When a Licensed Clinical Social Worker or Clinical Social Worker Associate offers the surrender of his or her License or Certificate after a complaint has been filed or the Board has initiated disciplinary action, the Board shall consider whether to accept the surrender of the License.

(a) When the Board accepts a surrender after a complaint has been filed or the Board has taken disciplinary action, the surrender is deemed to be the result of formal disciplinary action and the Board shall prepare an order accepting the surrender.

(b) The Board may require the Licensed Clinical Social Worker or Clinical Social Work Associate to agree to certain findings of fact and conclusions of law, including the making of admission to violations of Law or Administrative Rule.

(c) Surrender of a License or Certificate without acceptance thereof by the Board, or the failure of a Licensed Clinical Social Worker or Clinical Social Work Associate to renew the License or Certificate shall not deprive the Board of jurisdiction to continue disciplinary action under Division 40 of this Chapter.

(3) A License or Certificate which has been surrendered and accepted shall not be reinstated, however, a person may apply for a new license three years after the date the surrendered License or Certificate was accepted by the Board.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0046
Inactive Status for Licensees

(1) Inactive Status describes a Licensed Clinical Social Worker who does not practice clinical social work for an extended period of time. Licensed Clinical Social Workers who qualify for Inactive Status may be:

(a) Retired;

(b) On maternity leave;

(c) On military duty and not in clinical practice;

(d) Suffering from a major illness and not working;

(e) On sabbatical from active clinical social work practice.

(f) Not practicing clinical social work in the State of Oregon.

(2) Licensed Clinical Social Workers who have attained Inactive Status may retain their License without fulfilling the annual continuing education requirement. At the time of License renewal, a Licensed Clinical Social Worker may request Inactive Status by submitting the fee and a signed statement on a prescribed form declaring that he/she will not use the title of Licensed Clinical Social Worker for that Licensed Clinical Social Worker's renewal period. This statement must be submitted annually with each renewal for the period of the Inactive Status.

(3) A Licensed Clinical Social Worker on Inactive Status must comply with all provisions under ORS 675.510 et. seq. and OAR Chapter 877, except ORS 675.567 and OAR 877-025-0000.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05

877-020-0055
Return to Active Status for Licensees

Licensed Clinical Social Workers wanting to reactivate their License must submit a letter to the Board indicating the reason for returning to Active practice and develop a Plan with the Board to return to Active Status. This plan may involve participation in continuing education and/or clinical supervision.

(1) Continuing education required will be based on the number of years a Licensee has been Inactive and the reason for going on Inactive Status:

(a) Under two years, no continuing education is required unless defined in the Plan with the Board.

(b) 2-5 years, 20 hours of continuing education.

(c) 5-10 years, 40 hours of continuing education and supervision as designated by the Board.

(d) Over 10 years, will be determined in the Plan with the Board.

(2) The CE requirement to reactivate a License may be considered for meeting the needs of License renewal of 877-025-0000.

(3) The need for clinical supervision will be determined when developing a Plan with the Board based on the following:

(a) The Licensee has not been practicing clinical social work for more then five years, the Board may require supervision.

(b) The Licensee did not annually renew their License while on Inactive Status and their License has lapsed.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05

877-025-0000
Educational Requirement

(1) Each Licensed Clinical Social Worker shall complete a minimum of 40 hours of continuing education every two years, unless an exception is granted by the Board. Any such requests for exceptions to this requirement shall be made in writing to the Board.

(2) Licensed Clinical Social Workers shall not be required to comply with this requirement during the first renewal period in which they become licensed.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.565
Hist.: BCSW 2-1982, f. & ef. 10-11-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05

877-025-0005
Reports and Enforcement

With each annual renewal, Licensed Clinical Social Workers shall certify to the Board that they are engaged in continuing education activities.

(1) Continuing education hours shall be reported every two years except as otherwise required by the Board. Licensed Clinical Social Workers whose Licenses end in an even number shall file their continuing education report with their renewal in each year ending in an even number. Licensed Clinical Social Workers whose Licenses end in an odd number shall file their continuing education report with their renewal in each year ending in an odd number. The Continuing Education report shall be filed on a form prescribed by the Board.

(2) The accrual and reporting of continuing education requirements will begin with the first renewal period after initial licensure.

(3) In the reporting year, the Continuing Education report is considered part of the renewal of License and is due with the renewal. Each report form shall contain the number of continuing education hours received and the identity of the credentialing body.

(4) The Board may allow credit for continuing education activities provided or approved by mental health professional bodies recognized and approved by the Board. Activities may include conferences, seminars, or workshops either in-person or by web cast. The Board accepts pre-approved, proctored, and post-tested video or audio tapes as formal continuing education. Social work courses or their equivalent offered by an accredited college or university are also acceptable.

(5) The Board may allow up to 10 hours of credit per reporting period for continuing education activities not approved by a mental health professional body. The activities must be clinical in nature and relevant to the licensee's social work practice. The licensee must apply for Board acceptance at least 90 days prior to renewal of their License in the continuing education reporting year. Application for approval shall include date(s) of the event, title of the event (and a brief description of the course), name and credentials of the presenter(s), number of continuing education units requested, and a copy of the Certificate of Completion.

(6) If a Licensed Clinical Social Worker reports fewer than the required number of continuing education hours the Board may deny renewal until the deficiency is corrected.

(7) Licensed Clinical Social Workers shall maintain attendance certificates for use in completing biannual reports and shall retain these certificates for a period of 36 months. The Board may audit continuing education reports.

(8) A licensee may carry over up to a maximum of 10 formal hours of continuing education from one reporting period to the next reporting period.

(9) Study groups are authorized for up to 20 continuing education hours per reporting period. A study group is defined as having at least five Licensed mental health professionals who meet for a minimum of an hour on a scheduled basis to discuss topics directly related to the field of Clinical Social Work. Such groups shall focus on a presentation or discussion about a book or article from a professional publication. The topics must be directly related to established mental health care, and should be something that would likely be presented in an accredited social work program as relevant to good practice. Up to two hours of continuing education are authorized per group meeting and preparation time cannot be counted. Names of group members and topics discussed must be submitted upon request for continuing education verification. Plans for such study groups shall be submitted to the Board for pre-approval.

(10) For those Licensed Clinical Social Workers who develop and present Board-approved continuing education training, workshops, or seminars, the Board may grant a one-time continuing education credit in recognition of the licensee's efforts.

(11) The Board will accept continuing education credits from accredited colleges and universities without specifically identifying the continuing education as graduate level or equivalent. Continuing education credits earned from community or junior colleges will not be accepted as equivalent unless outside accreditation from a Board recognized credentialing body took place.

(12) Falsification of continuing education reports may be grounds for disciplinary proceedings.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.560(4)
Hist.: BCSW 2-1982, f. & ef. 10-11-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1988, f. & cert. ef. 11-15-88; BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05

877-030-0040
Conduct and Comportment of Clinical Social Workers

Clinical Social Workers are required to meet minimum standards of professional conduct in their capacity as Clinical Social Workers:

(1) Private conduct of Clinical Social Workers is a personal matter to the same extent as with any other person, except when that conduct compromises the fulfillment of professional responsibilities;

(2) Clinical Social Workers may not participate in, condone, or be associated with dishonesty, fraud, deceit, or misrepresentation;

(3) Licensed Clinical Social Workers and Clinical Social Work Associates must report to the Board as soon as possible, but not later than 30 days after receiving notice, of any civil lawsuit, criminal indictment, court-ordered diversion, driving under the influence of intoxicants arrest or conviction, or any regulatory action having been brought against them which relates to the Licensed Clinical Social Worker's or Clinical Social Work Associate's professional conduct.

(4) Clinical Social Workers must report child and elderly abuse as required by ORS 419B.005 to 419B.050 and 124.050 to 124.095;

(5) Clinical Social Workers may not misrepresent their professional qualifications, education, experience, or affiliations.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-030-0050
Professional Education

Licensed Clinical Social Workers must maintain their professional competency by meeting the continuing education requirements set out in OAR 877-025-0000.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-030-0070
Ethical Responsibility to Clients

The Clinical Social Worker's primary responsibility is to clients. Clinical Social Workers must serve clients with professional skill and competence including but not limited to the following:

(1) Dual Relationship:

(a) Clinical Social Workers must not violate their position of power, trust, and dependence;

(b) Clinical Social Workers may not enter into a relationship with a client that conflicts with the ability of the client to benefit from social work practice;

(c) Clinical Social Workers may not enter into a relationship with a client that may impair the Clinical Social Worker's professional judgment or increase the risk of exploitation of the client;

(d) Clinical Social Workers may not enter into a relationship with a client that increases the risk of exploitation for the client for the Clinical Social Worker's advantage;

(e) Clinical Social Workers may not enter into therapeutic relationships with any employee, supervisee, close colleague, or relative, or with any other person where there is a risk that the relationship would impair the Clinical Social Worker's judgment and increase risk of client exploitation.

(f) Clinical Social Workers may not enter into an employer, supervisor, or any other relationship where there is a potential for exercising undue influence on a client. This includes the sale of services or goods in a manner that might exploit a client for the financial gain or personal gratification of the Clinical Social Worker or a third party, or if there is a risk that such a relationship would be likely to impair the Clinical Social Worker's judgment and increase the risk of client exploitation. This applies both to current clients and to those to whom the Clinical Social Worker, has at anytime in the previous year, rendered services as a Clinical Social Worker.

(g) Clinical Social Workers may not, under any circumstances, engage in or solicit sexual acts or engage in any conduct, verbal behavior or other communication with or towards a client that may reasonably be interpreted as sexual, seductive or sexually demeaning. This prohibition applies to current clients and to clients to whom the Clinical Social Worker has at anytime within the previous three years provided clinical social work services. The client's consent to, initiation of, or participation in, sexual behavior with the Clinical Social

Worker does not change the prohibited nature of the conduct.

(2) Clinical Social Workers must provide services with professional skill, cultural awareness, and language competency with respect to each client's needs.

(3) Clinical Social Workers may not provide inappropriate or unnecessary treatment of therapy to clients.

(4) Clinical Social Workers must provide clients with accurate and complete information regarding the extent and nature of services available. This includes the risks, rights, opportunities, and obligations associated with the provision of professional services to the client.

(5) Clinical Social Workers must seek consultation or make referrals whenever it may improve the provision of professional service and is in the best interest of the client.

(6) Clinical Social Workers may not attempt to provide services to clients outside their area of competence, training, and qualifications established in their practice and continuing education.

(7) Clinical Social Workers must terminate services to clients when their services are no longer required or no longer serve the client's needs or interests.

(8) Clinical Social Workers may withdraw services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effect. Clinical Social Workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the client does not pose an imminent danger to self or others; if the financial arrangements have been made clear to the client; and if the clinical and other consequences of nonpayment have been addressed and discussed with the client.

(9) Clinical Social Workers who anticipate the termination or interruption of service to clients must notify those clients promptly and provide for transfer, referral, or continuation of service in relation to the client's needs and preferences.

(10) Clinical Social Workers may not violate the legal rights of their clients:

(a) When a Clinical Social Worker must act on behalf of a client who has been adjudged legally incompetent, the Clinical Social Worker must safeguard the interests and rights of that client.

(b) When another individual is legally authorized to act on behalf of a client, Clinical Social Workers may conduct business with that person, always keeping the client's best interests in mind.

(11) Except as permitted in ORS 675.580 and ORS 40.250, Clinical Social Workers must respect the privacy of clients and hold in confidence information obtained in the course of professional contact between client and the Clinical Social Worker.

(a) Information received from a potential client at the point of initial contact must be treated with the same respect for privacy as that of information received from a client.

(b) Clinical Social Workers must inform clients fully about the limits of client-therapist confidentiality.

(c) Clinical Social Workers must provide clients reasonable access to records concerning them and should take due care to protect the confidences of others contained in those records. Client access to their own records should be restricted only in exceptional circumstances when there is compelling evidence that access would cause harm to the client. Clinical Social Workers who are concerned that client access to their own records could cause serious misunder-standing or harm to the client should assist the client in interpreting the records. Both the client's request and the rationale for withholding some or all of the record should be documented in the case file.

(d) Clinical Social Workers must obtain informed consent from clients before taping, recording, or permitting third party observation of their activities.

(e) Clinical Social Workers, when making reports, must obtain a release of confidentiality and shall avoid undue invasion of privacy by only presenting patient data pertinent to the purpose of the report.

(12) Fees. Clinical Social Workers in fee-for-service settings may charge reasonable fees and must inform clients of the fee arrangement before providing services.

(13) Clinical Social Workers may not solicit the clients of colleagues.

(14) Clinical Social Workers may not solicit clients from their employer for private practice.

(15) Clinical Social Workers may not assume professional responsibility for the clients of another agency or colleague without appropriate communication with that agency or colleague.

(16) Clinical Social Workers must relate to the clients of colleagues with full professional consideration.

(17) A Clinical Social Worker who serves the clients of colleagues, during a temporary absence or emergency, must serve those clients with the same professional competence as to his or her own.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1994, f. & cert. ef. 2-17-94; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-030-0090
General Provisions Governing Conduct

(1) Unprofessional conduct is defined by, but not restricted to the items set out in Division 30 of this Chapter. Violation of the Code of Ethics may result in disciplinary proceedings under ORS 675.540.

(2) Clinical Social Workers must cooperate with the Board, its investigators, or any of its committees in any investigation it may make under OAR Chapter 877.

(3) Clinical Social Workers must fully comply with all Final Orders issued by the Board.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-030-0100
Disposition of Client Records in Case of Death or Incapacity of Licensee

Licensed Clinical Social Workers in private practice shall make necessary arrangements for maintenance of and access to client records to ensure confidentiality in the event of the death or incapacity of the licensee. The licensee shall name a qualified person to intercede for client welfare and to make necessary referrals, when appropriate, and shall keep the Board notified of the name of the qualified person. The Board shall not release the name of the qualified person except in the case of the death or incapacity of the licensee, or if the licensee is Inactive and a former client is unable to locate the licensee. A qualified person under this Rule shall be defined as a Clinical Social Worker or other Licensed mental health professional.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05

877-035-0012
Confidentiality of Information Supplied to the Board

(1) The records and proceedings compiled in regard to an impaired social worker and his/her treatment shall be confidential and shall not be considered as public records; provided, however, all such information may be disclosed:

(a) In a disciplinary hearing before the State Board of Clinical Social Workers or in a subsequent trial or appeal of a Board action or order.

(b) To Boards of other licensing agencies of other jurisdictions.

(c) Pursuant to an order of court of competent jurisdiction.

(d) To the current employer of the licensee.

(2) The name of any social worker who voluntarily agrees to enter a rehabilitation program and continues in such program including the required aftercare shall not be published.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05

877-035-0013
Criteria which Disqualify People from Program

Criteria which disqualify Licensed Clinical Social Workers or Clinical Social Work Associates from involvement in the Impaired Professional Program are:

(1) Criminal history involving injury/endangerment;

(2) Sale or manufacture of illegal substances;

(3) Sexual offenders;

(4) Three previous disciplines from the Board.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05

877-035-0015
Procedure for Evaluation of Competency

(1) On its own motion or upon complaint by any person the Board may require any person licensed under ORS 675.510 et seq. to undergo evaluation and/or rehabilitative therapy for impairment as defined above.

(2) The Board of Clinical Social Workers may impose one or more of the disciplinary penalties designated in ORS 675.540(2) against any social worker found to be an impaired social worker who:

(a) Refuses to cooperate with an evaluation ordered by the Board.

(b) Refuses to enter a rehabilitation program or ongoing monitoring recognized by the Board.

(c) Fails to sign a release allowing the Board to fully communicate with the rehabilitation program regarding the clinical social worker's progress or lack thereof.

(d) Fails to complete a rehabilitation program or ongoing monitoring recognized by the Board.

(e) Is found by the Board not to be capable of rehabilitation because of the severity of his or her impairment.

(3) The evaluation will be performed by a drug and evaluation center or professional of the Board's choosing. The evaluator shall have access to all material regarding the Clinical Social Work Associate or Licensed Clinical Social Worker in the Board's files and will have additional authority to contact all persons who have previously communicated to the Board regarding the alleged impaired status of the Clinical Social Work Associate or Licensed Clinical Social Worker.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05

877-040-0015
Notification to Respondent

(1) The Consumer Protection Committee may send a letter to the respondent stating the nature of the investigation. When appropriate, waivers of confidentiality shall be included with this letter. A written reply, accompanied by any documentation the respondent considers relevant, shall be requested within 30 days.

(2) If the respondent replies, the reply shall be reviewed by the Consumer Protection Committee. Additional or more specific information may be requested. Materials may be accepted from the respondent or counsel. Written statements from any other persons should be accompanied by an explanation of their relevance to the matter under consideration.

(3) If the respondent does not reply, the Consumer Protection Committee shall send a letter to the respondent noting the failure to reply and requiring a response within 15 days of the date of mailing. This letter shall inform the respondent that the Consumer Protection Committee may recommend a disposition to the Board at its next regularly scheduled Board meeting. If there is no response, the Board will proceed to review the complaint and determine what actions shall be taken. The Committee may recommend that a formal hearing be called even though there has been no response to the Board's request.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595(11)
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05

877-040-0050
Contested Case Hearing

(1) When the Board institutes disciplinary actions, notice of proposed actions, orders, or other official documents they must be served by certified mail, return receipt requested, on respondents and their attorneys. Notices must include:

(a) A short and plain statement of the matters charged.

(b) Reference to the particular sections of the Statutes and Rules involved.

(c) A statement that respondents have the right to request a Contested Case Hearing by filing a written request for hearing with the Board within the time specified in the Notice.

(d) A statement that failure to file a timely request for hearing shall be deemed a waiver of the right to a hearing under ORS Chapter 183, unless the failure to file a timely request for hearing was beyond the reasonable control of the respondent.

(e) A statement that the record of the complaint, including information in the Board's files related to the complaint, automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case.

(2) If the Board disciplines a Licensed Clinical Social Worker or a Clinical Social Work Associate, notice of this action will be placed in the Directory of Clinical Social Work Associates and Licensed Clinical Social Workers. Notice shall be published in the official newspaper of the county where the Associate or licensee practices and in Marion County. Notice shall be sent to the Oregon Chapter of the National Association of Social Workers (NASW) and also published in the Association of Social Work Boards (ASWB) Disciplinary Action Reporting System (DARS). Thereafter, inquiries about the respondent's status should be answered by the Board's Administrator in accordance with ORS 676.175. Requests for additional information should be considered by the full Board, acting with the advice of its counsel. Individual Board members and employees of the Board shall abstain from discussion and disclosure of details of complaints outside of the official activities described in these Rules.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595
Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05

877-040-0055
Request for Hearing

(1) A Hearing Request and Answer shall be made in writing to the Board by a party or his/her attorney and must be received by the Board within the time specified in the Notice.

(2) An Answer shall include the following:

(a) An admission or denial of each factual matter alleged in the Notice; and

(b) A short and plain statement of each relevant affirmative defense the party may have to the allegations in the Notice.

(3) Except for good cause:

(a) Factual matters alleged in the Notice and not denied in the Answer shall be presumed admitted;

(b) Failure to raise a particular defense in the Answer will be considered a waiver of such defense;

(c) New matters alleged in the Answer (affirmative defenses) shall be presumed to be denied by the Board; and

(d) Evidence shall not be taken on any issue not raised in the Notice and Answer.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595(11)
Hist.: BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05

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Board of Investigators
Chapter 220

Adm. Order No.: BI 1-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 12-30-05 thru 6-15-06
Notice Publication Date:
Rules Adopted: 220-005-0225, 220-005-0245
Rules Amended: 220-005-0005, 220-005-0010, 220-005-0015, 220-005-0110, 220-005-0115, 220-005-0120, 220-005-0130, 220-005-0135, 220-005-0140, 220-005-0150, 220-005-0160, 220-005-0170, 220-005-0210, 220-005-0220, 220-005-0250, 220-010-0020, 220-010-0030, 220-010-0050, 220-010-0060, 220-010-0300, 220-030-0035, 220-040-0015, 220-040-0035, 220-040-0045, 220-040-0050, 220-050-0110, 220-050-0140, 220-050-0300
Rules Suspended: 220-005-0230, 220-005-0240, 220-010-0200, 220-040-0025, 220-050-0105, 220-050-0150
Subject: Adopts and amends rules relating to the regulation of private investigators and provisional investigators who conduct business in the state of Oregon. The Oregon State Legislature mandated that the former Oregon Board of Investigators be dissolved and all licensed investigators be regulated by the Department of Public

Safety Standards and Training. This change has an effective implementation date of January 1, 2006.

Rules Coordinator: Bonnie Salle—(503) 378-2431

220-005-0005
Definitions

(1) "Administrative Termination" means the Department has stopped the processing of an application due to non-response from applicant or non-compliance with the application requirements or the requirements of these rules.

(2) "Board" means the Board on Public Safety Standards and Training.

(3) "Complainant" means any person or group of persons who file(s) a complaint. The Department may, on its own action, initiate a complaint.

(4) "Complaint" means a specific charge filed with the Department that a licensed investigator, or candidate thereto, or any person apparently operating as an investigator without a license, has committed an act in violation of ORS Chapter 703 or OAR chapter 220.

(5) "Committee" means the Private Security Policy Committee.

(6) "Continuing Education Guidelines" or "CE Guidelines" refers to the provisions of Oregon Administrative Rule 220-050-0300.

(7) "Department" means the Department of Public Safety Standards and Training.

(8) "Disciplinary Procedure" means all action up to the final resolution of a file after the issuance of a "Notice of Intent."

(9) "Educational endeavor that reasonably could be beneficial to the work of the investigator" as used in ORS 703.447(4) means those educational endeavors that are in compliance with the Department's Continuing Education Guidelines, or are approved by the Private Security Policy Committee.

(10) "Employee" as used in ORS 703.401 to 703.490, means a person who is employed lawfully by an employer. The employer controls the performance of that person; pays the salary, unemployment insurance, and worker's compensation insurance; and has sole authority to fire and control work hours and the conditions of work. "Employee" in this context does not include a person engaged as an independent contractor.

(11) "Expired license." A license is considered expired on the date of expiration. A person may not practice as an investigator with an expired license.

(12) "Hours of experience" means documented clock hours.

(13) "Investigatory work" means any work performed in accordance with ORS 703.401(2).

(14) "Licensee" or "Licensed Investigator," as used in OAR 220-001-0010 to 220-050-0300 means a person licensed as an investigator under ORS 703.430.

(15) "Private investigator" is a licensed investigator who has completed a minimum of 1500 documented clock hours of investigatory work experience or an approved course of study or a combination of work and study as approved by the Department.

(16) "Provisional investigator" is a licensed investigator who has completed fewer than 1500 documented clock hours of investigatory work experience, or an approved course of study, or a combination of work and study as approved by the Department; and who may not employ or supervise other investigators. Under 1997 and 1999 editions of governing statute, this type of investigator was referred to as a "Registered Operative."

(17) "Respondent" means an investigator who is a licensee or candidate for licensure, or any person apparently operating as an investigator without a license, against whom a complaint has been filed.

(18) "Stipulated Agreement" means a written agreement entered into between the Department and a respondent.

(19) "Violation" means a violation of Oregon Statutes or Administrative Rules as they pertain to the licensing requirements of investigators in the state of Oregon.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.401 - 703.490 & 703.995
Hist.: BI 3-2000, f. 7-25-00, cert. ef. 10-1-00; BI 4-2000(Temp), f. 9-13-00, cert. ef. 9-15-00 thru 3-10-01; BI 1-2001, f. 3-7-01, cert. ef. 3-8-01; BI 2-2001(Temp), f. 5-18-01, cert. ef. 5-21-01 thru 11-16-01; BI 3-2001, f. 10-19-01, cert. ef. 11-1-01; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0010
Fees

For the purpose of administering the licensing program under ORS Chapter 703.401 through 703.995, appropriate fees shall be submitted to the Department, by applicants for licensure for each of the following categories:

(1) Application:
(a) Private Investigator;
(b) Provisional Investigator.
(2) Licensing:
(a) Private Investigator;
(b) Provisional Investigator;
(c) Inactive License;
(d) Temporary License;
(e) Interim License.
(3) Renewal of Licenses:
(a) Private Investigator;
(b) Provisional Investigator.
(4) Issuance of Identification cards: Replacement Card/License.
(5) Late renewal of License.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425, 703.430, 703.435, 703.445 & 703.480
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2002, f. 12-9-02. cert. ef. 1-1-03; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0015
Payment of Fees

(1) Fees are due at the time of application. Payments to the Department are non-refundable, and must be paid by business check, money order or cashier's check.

(2) A current fee schedule for the private investigator licensing program may be obtained from the department.

NOTE: Make all checks payable to DPSST.
Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(3)
Hist.: BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0110
Initial and Renewal Applications

(1) Applications must be submitted on Department approved forms pursuant to ORS 703.425. All applicants must disclose on the initial application information required by ORS 703.425, including:

(a) Social Security Number;
(b) Home Address and Telephone Number;
(c) Business Address and Telephone Number;
(d) Place of Birth;
(e) Any license, certification or registration, including:
(A) The title or type of such license, certification or registration;
(B) The location of the agency issuing such license, certification, or registration;
(C) The license, certification or registration number issued;
(D) The dates such license, certification or registration was held; and
(E) All information regarding any revoked license, certification or registration.

(2) All applicants must disclose on the initial and renewal application any information requested, including:

(a) A statement listing all offenses of which the applicant has been convicted;
(b) A statement that the applicant is not required to register or be registered as a sex offender under ORS 181.595, 181.596 or 181.597;
(c) A statement affirming the truth of all information contained in the application;
(d) A statement listing all complaints, lawsuits, arbitration, mediation, or disciplinary actions regarding investigative activities; and
(e) A statement listing all claims filed against the investigator's surety bond, credit, or insurance.

(3) Submission of any false information in connection with an application, supporting documentation or attachments for a license or registration may be grounds for discipline, criminal penalty, or civil penalty.

(4) Renewal applications, renewal fees, and support documentation should be received, at a minimum, two weeks prior to, but not more than ninety days prior to, a licensee's expiration date to allow for processing time.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425, 703.445, 703.460 & 703.465
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0115
Application Requirements for Licensees with Expired Licenses

Applicants for licensure who were previously licensed in Oregon must provide either:

(1) Proof of completion of continuing education requirements during or since the last active status period; or

(2) A written explanation detailing why continuing education requirements were not met during his/her most recent active status period, and a written plan detailing how they will be made up, including a time line. The Department at its discretion may accept the plan in place of completed CE.

Not meeting continuing education requirements could be grounds for denial of a license.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425, 703.445 & 703.480(3)
Hist.: BI 1-2001, f. 3-7-01, cert. ef. 3-8-01; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0120
Review of Disclosures

(1) The Department will conduct a review of any application on which disclosures have been made to determine if a license should be issued pursuant to ORS 703.415(3), 703.450, 703.465.

(2) Criminal History. An applicant for licensure must not:

(a) Have been convicted of a person felony, as defined in the rules of the Oregon Criminal Justice Commission: ORS 162.165 (Escape I), 162.185 (Supplying Contraband as defined in Crime Categories 6 and 7 (Appendix 3)), 163.095 (Aggravated Murder), 163.115 (Murder), 163.118 (Manslaughter I), 163.125 (Manslaughter II), 163.145 (Negligent Homicide), 163.160(3) (Assault IV Felony), 163.165 (Assault III), 163.175 (Assault II), 163.185 (Assault I), 163.205 (Criminal Mistreatment I), 163.213 (Use of Stun Gun/Tear Gas/Mace I), 163.225 (Kidnapping II), 163.235 (Kidnapping I), 163.275 (Coercion as defined in Crime Category 7 (Appendix 3)), 163.355 (Rape III), 163.365 (Rape II), 163.375 (Rape I), 163.385 (Sodomy III), 163.395 (Sodomy II), 163.405 (Sodomy I), 163.408 (Sexual Penetration II), 163.411 (Sexual Penetration I), 163.425 (Sexual Abuse II), 163.427 (Sexual Abuse I), 163.525 (Incest), 163.535 (Abandon Child), 163.537 (Buying or Selling a Person Under 18 Years of Age), 163.670 (Using Child in Display of Sexually Explicit Conduct), 163.684 (Encouraging Child Sex Abuse I), 163.686 (Encouraging Child Sex Abuse II), 163.688 and 163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child I and II), 163.732 (Stalking), 163.747 (Violation of Officer's Stalking Order), 163.750 (Violation of Court's Stalking Order), 164.075 (Theft by Extortion as defined in Crime Category 7 (Appendix 3)), 164.225 (Burglary I as defined in crime Categories 8 and 9, Appendix 3), 164.325 (Arson I), 164.395 (Robbery III), 164.405 (Robbery II), 164.415 (Robbery I), 164.877(3) (Tree Spiking (Injury)), 166.087 (Abuse of Corpse I), 166.165 (Intimidation I), 166.220 (Unlawful Use of a Weapon), 166.275 (Inmate in Possession of Weapon), 166.385(3) (Felony Possession of a Hoax Destructive Device), 167.012 (Promoting Prostitution), 167.017 (Compelling Prostitution), 468.951 (Environmental Endangerment), 811.705 (Hit and Run Vehicle (Injury)), 830.475 (Hit and Run (Boat)) and attempts or solicitations to commit any Class A or Class B person felonies as defined herein, or an equivalent crime with similar elements in another jurisdiction. Only Class B and Class C felony convictions may be considered by the policy committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2)(i).

(b) Within the 10-year period prior to applying for, or during, licensure, must not:

(A) Have been incarcerated, placed on probation or paroled as the result of conviction of any felony, other than those described in subsection (a) of this section in this, or any other, jurisdiction. Class B and Class C felony convictions may be considered on a limited basis by the policy committee and the Board for waiver of suspension, denial or revocation, under the process outlined in OAR 259-060-0300(2)(i).

(B) Have been convicted of violating ORS 163.435 (Contributing to the Sexual Delinquency of a Minor), 163.672 (1993 Edition) (Possession of Depiction of Sexual Conduct of a Child), 163.673 (1993 Edition) (Dealing in the Depiction of Sexual Conduct of a Child), 167.007 (Prostitution), 167.062 (Sadomasochistic Abuse or Sexual Conduct in a Live Show), 167.065 (Furnishing Obscene Material), 167.070 (Sending Obscene Material to Minors), 167.075 (Exhibiting An Obscene Performance to a Minor), 167.080 (Displaying Obscene Material to Minors), 167.087 (Disseminating Obscene Material) or an equivalent crime with similar elements in another jurisdiction. There will be no waivers granted for these listed convictions.

(C) Have been convicted of a person misdemeanor, as defined in the rules of the Oregon Criminal Justice Commission: ORS 161.405(2)(d) Attempt or 161.435(2)(d) Solicitation to Commit any Class C person felony as defined by the Oregon Criminal Justice Commission, 162.315 (Resisting Arrest), 163.160 (Assault IV), 163.190 (Menacing), 163.195 (Recklessly Endangering Another Person), 163.200 (Criminal Mistreatment II), 163.208 (Assaulting a Public Safety Officer), 163.212 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace II), 163.545 (Child Neglect II), 163.575 (Endangering the Welfare of a Minor), 163.605 (Criminal Defamation), 163.732(1) (Stalking), 163.750(1) (Violating Court's Stalking Protective Order), 166.065(4) [Harassment (Offensive Sexual Contact)], 166.155 (Intimidation II), 166.385 (Possession of Hoax Destructive Device) or an equivalent crime with similar elements in another jurisdiction;

(D) Have been convicted of the following misdemeanors: ORS 162.075 (False Swearing), 162.085 (Unsworn Falsification), 162.145 (Escape III), 162.247 (Interfering with a Peace Officer), 162.295 (Tampering with Physical Evidence), 162.335 (Compounding a Felony), 162.365 (Criminal Impersonation), 162.369 (Possession of False Law Enforcement Identification Card), 162.385 (Giving False Information to Police Officer), 163.465 (Public Indecency), 163.709 (Unlawful Directing of Light from a Laser Pointer), 164.045 (Theft II), 164.125(5)(b) (Theft of Services), 164.140 (Criminal Possession of Rented or Leased Personal Property), 164.235 (Possession of Burglar's Tools), 164.255 (Criminal Trespass I), 164.265 (Criminal Trespass while in Possession of a Firearm), 164.335 (Reckless Burning), 164.354 (Criminal Mischief II), 164.369 (Interfering With Police Animal), 164.377(4) (Computer Crime), 165.007 (Forgery II), 165.055(4)(a) (Fraudulent Use of a Credit Card), 165.065 (Negotiating a Bad Check), 166.115 (Interfering With Public Transportation), 166.250 (Unlawful Possession of Firearms), 166.350 (Unlawful Possession of Armor Piercing Ammunition), 166.425 (Unlawful Purchase of Firearm), 167.262 (Adult Using Minor in Commission of Controlled Substance Offense), 471.410 (Providing Liquor to Person under 21 or Intoxicated Person), or an equivalent crime with similar elements in another jurisdiction.

(c) Have been convicted, within the 10-year period prior to applying for, or during, certification or licensure, of a "misdemeanor crime of domestic violence," in this or any jurisdiction. A "misdemeanor crime of domestic violence" means a misdemeanor under the law of any jurisdiction involving the use or attempted use of physical force, or threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is co-habiting with or has co-habited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or a guardian of the victim.

(d) Have been convicted of a misdemeanor or felony involving the unlawful use, possession, delivery or manufacturing of a controlled substance, or a misdemeanor or felony of similar elements, in this or any jurisdiction: 475.525 (Sale of Drug Paraphernalia), 475.991 (Unlawful Delivery of Imitation Controlled Substance), 475.992 (Prohibited Acts, Manufacturing and Delivering), 475.995 (Distribution to Minors), 475.999 (Manufacturing or Delivering of a Controlled Substance within 1,000 feet of School), or an equivalent crime with similar elements in another jurisdiction.

(e) Have been required to register or be registered as a sex offender under ORS 181.595, 181.596 or 181.597.

(f) Have been convicted, within the seven-year period prior to applying for, or during, certification or licensure, of the following misdemeanors, or a misdemeanor of similar elements, in this or any jurisdiction; 164.043 (Theft III), 164.125(5)(a) (Theft of Services), 162.375 (Initiating a False Report), 166.240 (Carrying of Concealed Weapons), or an equivalent crime with similar elements in another jurisdiction.

(3) Failure to disclose a criminal conviction, on an application for licensure, of any Misdemeanor or Felony crime is grounds for denial, suspension or revocation of a license, and may include criminal or civil penalties.

(a) Department Staff Review: The Department or its designated staff shall review the disclosure and shall request further information or conduct its own investigation of the matter. If there is grounds for a suspension, revocation or denial based on the statutory and administrative rule requirements, the department shall notifiy the applicant or license holder in writing.

(b) Initiation of Proceedings: The Department's designated staff shall determine if the reason for suspension, revocation or denial and supporting factual data meet the statutory and administrative rule requirements and so advise the applicant or license holder.

(c) Contested Case Notice: The Department or its designated staff shall prepare a "Contested Case Notice" in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department or its designated staff must serve a copy of the "Notice" on the person whose application or licensure is being affected.

(d) Emergency Suspension Order: Notwithstanding subsection (e), the Department may immediately suspend a person upon a report that a person has been arrested for, or charged with, any crime listed in OAR 220-005-0120(2). The report may be received in any form and from any source.

(e) An Emergency Suspension Order must be in writing. The order may be issued without prior notice to the individual and without a prior opportunity for a contested case hearing. An Emergency Suspension Order must:

(A) Generally describe the acts of the person and any circumstances that would be grounds for an Emergency Suspension Order under this rule; and

(B) Identify the person at the Department whom the individual may contact and who is authorized to make recommendations regarding issuance of the order.

(f) When the Department issues an Emergency Suspension Order, it shall be served on the individual either personally or by registered or certified mail and must contain the following information:

(A) The effective date of the Emergency Suspension Order;

(B) A statement of findings detailing the specific acts or omissions of the person that violate applicable laws or rules and which serve as the grounds for revocation or suspension;

(C) A reference to the sections of the statutes and rules involved;

(D) A statement indicating the individual has the right to request a hearing to contest the Emergency Suspension Order;

(E) A statement indicating the individual will have waived their right to a hearing regarding the Emergency Suspension Order if the request for a hearing is not received by the Department within 20 calendar days of the date of notice of the Emergency Suspension Order; and

(F) A statement indicating a hearing will be held as soon as is prudent and practicable if a timely request for a hearing is received.

(g) If the individual submits a timely request for a hearing, the Department will hold a hearing on the Emergency Suspension Order as soon as is prudent and practicable.

(A) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the license or certificate.

(B) The sole purpose of the hearing will be to determine whether the individual was charged with or arrested for a crime listed in OAR 259-060-0020(4). Upon a showing that an individual was not charged with or arrested for a crime in OAR 259-060-0020(4), the suspension of the individual's certificate or license will be immediately lifted; otherwise, the suspension will remain in effect until final disposition of the charges or arrest.

(h) Response Time:

(A) Revocation or Denial: If the Department is seeking revocation or denial of a license or certificate, a party who has been served with the "Contested Case Notice" must submit a written request for a hearing to the Department within 60 calendar days from the date of mailing or personal service of the notice.

(B) Suspension: If the Department is seeking suspension of a license or certificate, a party who has been served with an Emergency Suspension Order must submit a written request for a hearing to the Department within 20 calendar days from the date of mailing or personal service of the notice. The Department may extend the time allowed for submission of the written request for a hearing for up to 30 calendar days upon request.

(i) Default Order: If a timely request for a hearing is not received by the Department, the Contested Case Notice or Emergency Suspension Order will become a final order revoking, suspending or denying certification pursuant to OAR 137-003-0075(5).

(j) When the Department revokes a certification or denies an applicant's license, an individual is ineligible to reapply for future certification or licensure for a period of three (3) years from the date of final Department action or order. Any applicant reapplying for licensure must reapply in accordance with the provisions of ORS 703.401–703.490.

(k) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Hearings Officer Panel in accordance with OAR 137-003-0075(5).

(4) A denial or revocation of a license pursuant to ORS 703.450(4) will cause the denial, suspension, or revocation of all licenses administered by the Department.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.415(3), 703.450 & 703.465
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0130
Bonds and Letters of Credit

(1) Applications for licensure must be accompanied by proof of a minimum $5000:

(a) Corporate surety bond completed on a Department approved form; or

(b) An irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005.

(2) Bonds and Letters of Credit must have the applicant's name listed as principal;

(3) A bond will not be valid until filed with the Department and the investigator is licensed with the Department in accordance with ORS Chapter 703;

(4) A bond will not be valid for purposes of licensure in accordance with ORS Chapter 703 unless filed with the Department within sixty (60) days of the signature date on the bond;

(5) An irrevocable letter of credit submitted pursuant to ORS Chapter 703, must be approved by the Department prior to issuance of a license.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425(2)(e)
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0135
Errors and Omissions Insurance

(1) Any licensed investigator who does not have a current surety bond or irrevocable letter of credit on file with the Department:

(a) Is required to notify the Department if his or her errors and omissions insurance policy is cancelled or lapses for any reason;

(b) Notification must be given to the Department within seven days of such cancellation or lapse.

(2) If a licensed investigator plans to cancel an errors and omissions insurance policy and does not have a current surety bond or irrevocable letter of credit on file with the Department, he or she must give 30 days notice for any such intended cancellation.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425(2)(e) & 703.425(5)
Hist.: BI 4-1999(Temp), f. 10-14-99, cert. ef 10-23-99 thru 4-15-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0140
Photographs for Identification

(1) Applications for an investigator's initial or renewal license must be accompanied by two (2) identical color photographs taken of the applicant within the previous six months of filing the application;

(2) The size requirements of the photographs must be in compliance as outlined on the application form. The applicant's head in the photo must not be larger than 1" wide and 1.25" high;

(3) The applicant's face must be clearly visible and free from shadows or other viewing obstacles;

(4) If a replacement identification card is needed, 2 new, identical photographs will be required. Photographs that do not meet the above requirements may be returned to the applicant and delay the application process. Photocopies will not be accepted.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425(2)(b)
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0150
Fingerprint ID Cards

(1) Applications for licensure must be accompanied by two complete sets of fingerprints.

(2) Fingerprints must be submitted on an FBI standard applicant fingerprint card, Form FD258.

(3) Fingerprints must be clear as outlined in the instructions on the back of the fingerprint card;

(4) Affidavit and bag.

(5) Cards rejected by the state police or FBI may be returned for resubmitted. An additional fee will be charged for the third submittal occurring after the second rejection.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425(2)(c)
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0160
References

(1) Applications for licensure must be accompanied by three (3) professional references, none of which may be from a person who is related to the applicant by blood or marriage.

(2) Professional letters of reference may be submitted to help show that the applicant fulfills the experience requirement pursuant to ORS 703.415(2).

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425(2)(d)
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0170
Review of Application Materials

The Department will review all application materials for completeness and may:

(1) Upon written notice from the Department to the applicant, administratively terminate the application, for any of the following reasons:

(a) The Department has reason to believe that a person with the applicant's name and birth date has committed an act that constitutes grounds for denial of a license under ORS 703.465. The termination of an application due to a criminal conviction disqualification is subject to the contested case hearing procedures set forth in ORS 703.470.

(b) The application or any required documentation is incomplete or the Department has been unable to verify application information to its satisfaction due to non-response or non-compliance of the applicant.

(c) Applicant has violated any administrative rule or condition imposed by ORS or OAR concerning the licensure and conduct of a Private Investigator or applicant as such. Applicants, who provide false information to the Department, may be disqualified from reapplying for a period of 3 years.

(d) The fingerprint cards of applicant have been rejected and returned by the Oregon State Police or Federal Bureau of Investigations.

(2) The Department or its designated staff may administratively terminate the application process if the Department is unable to complete the certification process due to non-response or non-compliance of the applicant after exhausting the following efforts:

(a) A letter shall be mailed by the Department to the applicant, and the last known mailing address of the applicant, identifying the deficiencies in the application process.

(b) The applicant shall have 21 calendar days from the date of mailing to notify the Department that the deficiencies are corrected. The Department may, in its discretion, elect to extend the time for compliance upon good cause shown by the applicant or its manager.

(c) If the Department is unable to determine a current address for the applicant, or if the applicant does not respond and correct the deficiencies within 21 calendar days, or such additional time authorized by the Department, the Department shall list the applicant's status as "administratively terminated." The Department shall notify the applicant at his or her last known address, that the Department has administratively terminated the application process.

(3) Once the application process has been administratively terminated, the applicant can reapply at any time by submitting a new completed application and appropriate fees.

NOTE: Applicants who have been denied, revoked or suspended for any reason may not reapply for licensure for a period of 3 years from the date of final action.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.425
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0210
Administration of the Exam

(1) The Department will adopt a test of professional investigator competency.

(2) Department staff or department approved designee will proctor the exam, at a time and place established by staff or the designee.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(4)
Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 3-1998(Temp), f. & cert. ef. 5-27-98 thru 11-23-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0220
Exam Results

(1) The minimum passing score for the exam is 85%.

(2) The exam may be administered to an applicant no more then three consecutive times. If the applicant does not pass the exam on the third attempt, the applicant must wait one year from the date the last exam was taken to re-take the exam.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(6)
Hist.: BI 3-1998(Temp), f. & cert. ef. 5-27-98 thru 11-23-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0225
Temporary License

(1) A person licensed as an Investigator in another jurisdiction may be licensed as a temporary investigator in the state of Oregon if:

(a) The person is licensed or certified to practice as an investigator in another state or jurisdiction;

(b) The certification or licensing standards of the other state or jurisdiction meet or exceed the standards for achieving a Provisional License in the state of Oregon, including a criminal background check.

(c) The person pays a non-refundable temporary license fee.

(d) The Department has received the application packet for Temporary Licensure.

(2) The person shall provide to the Department a copy of the authorizing states statutory requirements for private investigators, demonstrating that the person has undergone a criminal history background check. Additionally, the person shall provide a copy of the held certification or license issued by the authorizing jurisdiction and submit a Department approved application requesting a Temporary License. The Application form is a triplicate form; the original and one copy shall be mailed to the Department, one copy shall be retained by the investigator. The investigator's copy shall be carried on the person at all times while performing investigative services in this state. It shall be presented to any law enforcement officer upon demand and shall be displayed to any other person upon reasonable request.

(3) The Temporary License application packet must be mailed to the Department on or before the first day the person performs investigatory services in Oregon.

(4) The Temporary License shall be in effect for 90 days from the date the complete application and fees are received.

(5) The intent of this provision is to allow out-of-state investigators to temporarily conduct lawful business in this state.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.430(2)(a)
Hist.: BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0230
Exam Retakes

(1) Applicants who fail the exam may retake the exam only after submitting a Board approved retake application form accompanied by the proper retake fee;

(2) The exam may be administered to an applicant only three times. If the applicant does not pass the exam by the third attempt, the Board may ask the applicant to wait one year from the date the last exam was taken to reapply for a new exam process.

Stat. Auth.: ORS 703.480(3)
Stats. Implemented: ORS 703.480(6)
Hist.: BI 3-1998(Temp), f. & cert. ef. 5-27-98 thru 11-23-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; Suspended by BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0240
Appealing Exam Results

(1) An applicant may appeal the results of his or her exam in writing;

(2) The Board must receive a written request for an appeal within 30 days from the date the exam results were mailed to the applicant;

(3) The applicant has the right to review their exam at the time of appeal;

(4) The Board will review such appeals at their next regularly scheduled Board meeting.

Stat. Auth.: ORS 703.480(3)
Stats. Implemented: ORS 703.480(6)
Hist.: BI 3-1998(Temp), f. & cert. ef. 5-27-98 thru 11-23-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; Suspended by BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0245
Interim Investigators License

(1) An employer, an attorney, or a private investigator licensed under ORS 703.430 may request an Interim Investigator's License for an applicant whose application for licensure as a Private or Provisional investigator is being processed by the Department. The Interim License allows the applicant to perform investigatory services within this state for a period of time not to exceed 120 days under the following conditions:

(a) The applicant has never been convicted of, plead guilty or no contest to or forfeited security for a crime;

(b) The applicant has submitted all required application materials, paid required fees, and passed the required exam;

(c) The employer has completed and signed the applicable portions of the Interim License request, affirming the above requirements have been met; and

(d) The Interim License request shall bear a postmark on or before the first day the applicant performs investigative services.

(e) If an applicant has not completed each step of the application process, the applicant shall not perform investigatory services.

(f) The intent of this provision is to allow an employer or attorney or private investigator to legally deploy a private or provisional investigator, while the application for licensure is being processed.

(2)The Interim License will be valid no longer than 120 days or, in any event, shall end upon written notice from the Department to the applicant that the License has been administratively terminated under OAR 220-005-0170.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.430(2)(b)
Hist.: BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-005-0250
Copying and Distribution of the Exam

(1) No person, school, association or any other entity is authorized to copy or distribute any exam administered by the Department without prior written authorization;

(2) Applicants who take the exam must not disclose to anyone or any entity the contents of the exam including the exam questions and answers.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(4)
Hist.: BI 3-1998(Temp), f. & cert. ef. 5-27-98 thru 11-23-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-010-0020
Educational Substitutes for Experience

(1) Completion of a related course of study at an educational institution licensed or approved by a State Department of Education or other State approving agency, and approved by the Department may be substituted for up to 500 hours of the required work experience. Correspondence courses, online courses, or similar coursework will be evaluated on a case-by-case basis.

(2) Educational substitutions applied toward the required work experience will be granted on a three to one (3 to 1) basis and will be calculated using clock hours spent in class. For example, three hours in class would equate to one hour of allowable experience;

(3) Applicants must provide the Department or its authorized representative verifiable documentation in the form of sealed certified transcripts or an official certificate from the administering institution(s) showing successful completion of study in the related subject matter;

(4) The Department or its authorized representative will review the subject matter of the applicant's education on an individual basis;

(5) Certified transcripts or official copies of certificates presented to the Department in an envelope sealed by the program or institution or instructor and verified as sealed may be accepted directly from the applicant;

(6) If a program or institution granting credit is no longer in business, the Department will accept for review a copy of a certificate of completion or transcript or diploma in the required subject matter and hours. The Department may require additional information to verify the authenticity of such documents.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.415(7)
Hist.: BI 2-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-010-0030
Provisional Investigator Upgrade to Private Investigator

(1) The license of a Provisional Investigator will be upgraded to a Private Investigator license when the applicant provides verifiable documentation that he or she has performed 1500 hours of investigatory work, or completed a course of study approved by the Department.

(2) The expiration date for a provisional investigator's current license will not change when upgraded to a private investigator unless the upgrade is granted at the time of renewal, or a new application and fee is recieved.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(1)
Hist.: BI 2-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-010-0050
Applying for Inactive Status

(1) A licensed investigator may apply, using a Department-approved form, for inactive status.

(2) A licensee may be granted inactive status upon:

(a) Payment of the inactive license fee; and

(b) Submission of the inactive status request form to the Department.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(1)
Hist.: BI 2-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-010-0060
Applying for Reinstatement to Active Status

(1) A licensee in inactive status may apply to be reinstated to active status by paying the appropriate license renewal fee and completing the appropriate renewal application form;

(2) A licensee applying for reinstatement to active status must comply with appropriate continuing education requirements as outlined in OAR 220 division 50.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(1)(3)
Hist.: BI 2-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-010-0200
Compliance with the Corporation Division

(1) An assumed business name (ABN) used by any licensed investigator must be registered with the State of Oregon Corporation Division if the investigator operates or intends to operate an investigative business under any name other than the investigator's legal first and last name;

(2) A limited liability company (LLC), limited liability partnership (LLP), corporation or other business entity used by an investigator for investigative purposes as defined in ORS Chapter 703 must be registered with the State of Oregon Corporation Division;

(3) No license or renewal will be issued unless the investigator is in compliance with sections one (1) or two (2) of this rule;

(4) Non-compliance with the Corporation Division by a licensed investigator may be grounds for disciplinary actions by the Board.

Stat. Auth.: ORS 703.480(3)
Stats. Implemented: ORS 703.430
Hist.: BI 2-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; Suspended by BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-010-0300
Maintaining Current Information

Within 10 days of a change, a licensed investigator or applicant for licensure must notify the Department in writing of any changes to name, home address, home phone number, mailing address, business name, business address, or business phone number.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.460
Hist.: BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-030-0035
Code of Ethical Conduct

All licensed investigators must, at all times, observe the rules and requirements of conduct as follows:

(1) Obey all laws in the pursuit of their investigations;

(2) Abide by all provisions of ORS Chapter 703 and OAR chapter 220 as they relate to licensed investigators;

(3) Never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence their professional decisions;

(4) Never compromise and shall relentlessly perform their duties in accordance with the law, courteously and appropriately, without fear or favor, malice or ill-will;

(5) Never employ unnecessary or unlawful force or violence;

(6) Maintain each client's confidentiality within the limits of the law;

(7) Be accountable and responsible for their actions;

(8) Accept sole responsibility for their individual standard of professional performance and take every reasonable opportunity to enhance and improve their level of knowledge, competence, and professional integrity;

(9) Actively seek and report the truth in the performance of their professional duties;

(10) Be above reproach in the financial aspects of their relationships with clients;

(11) Keep promises, fulfill commitments and abide by the spirit of agreements made with their clients as well as the letter of agreements with their clients;

(12) Recognize that the credential of a licensed investigator is a symbol of public faith and will accept it as a public trust, to be held only so long as they are true to the ethics of the investigative profession.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(5)
Hist.: BI 3-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-040-0015
Compliance

(1) The Department or its designated staff may cause inspections of records and procedures of private investigators or of applicants for licensure, relating to the minimum licensing standards and requirements that are mandated by ORS 703.010–703.995, as well as those records and procedures which are under the purview of OAR chapter 220, divisions 01, 05, 10, 30, 40, and 50, in order to verify adherence to and compliance with any applicable rule or statute.

(2) The Department or its designated staff may cause any administrative proceeding and/or court action to be initiated to enforce compliance

with the provisions of ORS 703.010–703.995, and the administrative rules promulgated thereunder.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(2)
Hist.: BI 3-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-040-0025
Management of Complaints

A board member who is unable to render an impartial, objective decision regarding any complaint must abstain from participating in the preparation, hearing, deliberation and disposition of such complaint. An abstention will be effective from the time a Board member announces his/her decision not to participate.

Stat. Auth.: ORS 703.480(3)
Stats. Implemented: ORS 703.480(4)
Hist.: BI 3-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; Suspended by BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-040-0035
Filing a Complaint

(1) All complaints must be submitted on a Department approved compliant form, unless the Department grants an exception.

(2) A complainant other than the Department should file the complaint with the Board within one year of knowledge of the incident's occurrence.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(2)
Hist.: BI 3-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-040-0045
Form of Complaints

(1) When a complaint is first made, the staff will provide the complainant with the Department's complaint form. Unless there is an approved exception, this form shall be completed by the complainant and submitted to the Department before a complaint is investigated.

(2) Unless otherwise prohibited by law, if the complainant is a client or former client of the respondent, the complainant must sign the waiver of confidentiality allowing the Department access to records and other materials. Refusal by a complainant to comply with these requirements may result in no investigation of the complaint.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(2)
Hist.: BI 3-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-040-0050
Compliance

(1) A preliminary administrative review of the complaint will be made by Department staff to assure there is sufficient information to proceed. Staff will: Conduct a fact finding preliminary investigation (e.g. data searches and other inquiries).

(2) If sufficient information is determined to support the allegation(s) of the complaint, staff will:

(a) Open and conduct an investigation. Gather relevant information and, in doing so, may submit questions to the respondent and require written answers and copies of related documents. The respondent shall comply within twenty (20) days after the request is mailed, unless the Department authorizes an extension.

(b) Notify Respondent of intended action as authorized by ORS 703.465 and 703.995.

(c) Seek Resolution by Stipulation. Department staff is authorized to seek resolution by stipulation, subject to acceptance and approval by Director, if:

(A) The matter is resolved before entry of any final order;

(B) The agreement has been entered into freely and voluntarily by respondent;

(C) The respondent corrects or proceeds to correct all deficiencies itemized by Department under the terms of the agreement; and

(D) Any penalty amount agreed to is tendered in certified check, bank draft, cashier's check or postal money order, along with the stipulation.

(E) A stipulation shall not be accepted if the violation is for failure to obtain a required license, and such is not obtained as part of the resolution.

(3) If the Department finds that an allegation is false, all records of the complaint shall be destroyed.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.480(2)
Hist.: BI 3-1999(Temp), f. 9-28-99, cert. ef. 10-1-99 thru 3-28-00; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-050-0105
Continuing Education Programs

All continuing education programs must be in compliance with the Oregon Board of Investigators' Continuing Education Guidelines, as set forth in these rules. The hour limitations and other requirements set forth in the Continuing Education Guidelines do not apply to Continuing Education hours earned before July 1, 2003.

Stat. Auth.: ORS 703.480(3)
Stats. Implemented: ORS 703.447
Hist.: BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; Suspended by BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-050-0110
Continuing Education Requirements for Investigator License Renewal

(1) No Private Investigator license renewal will be issued by the Department unless the licensee has satisfactorily completed and reported thirty-two (32) continuing education program hours in compliance with the Departments' Continuing Education Guidelines. Two (2) of the hours must be in ethics.

(2) No Provisional Investigator license or renewal will be issued by the Department unless the licensee has satisfactorily completed and reported forty (40) continuing education program hours in compliance with the Departments' Continuing Education Guidelines. Two (2) of the hours must be in ethics.

(3) A licensed investigator may carry over up to fifteen (15) hours of unused continuing education credit hours to his/her next licensing period.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.447
Hist.: BI 2-2000, f. 2-25-00, cert. ef. 3-1-00; Suspended by BI 5-2001(Temp), f. 12-6-01, cert. ef. 12-7-01 thru 6-5-02; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-050-0140
Inactive License Continuing Education Requirements

(1) The Department will review, a licensee's application for re-activation and determine, on a case-by-case basis, the number of continuing education credit hours required of the licensee prior to approving the active status;

(2) The licensee should be prepared to provide the Department with documentation of the number of hours of continuing education completed during the licensee's most recent active status period.

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.447
Hist.: BI 2-2000, f. 2-25-00, cert. ef. 3-1-00; Suspended by BI 5-2001(Temp), f. 12-6-01, cert. ef. 12-7-01 thru 6-5-02; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-050-0150
Continuing Education Program Certification and Audits

(1) The Board of Investigators may randomly audit licensed investigators for compliance with Continuing Education requirements;

(2) Investigators being audited must provide both a compliance form and verification of satisfactory completion of programs attended. If the Board, or its authorized representative does not accept a program as submitted:

(a) The licensee will have up to 90 days to make up the continuing education hours;

(b) The licensee may have his/her license renewed by paying the normal renewal fee with the expectation that the hours of continuing education not approved will be completed within the 90 days of the renewal date;

(c) The licensee will be subject to disciplinary action if continuing education program deficiencies are not made up within the ninety (90) days of their renewal date; and

(3) The Board may charge a late renewal fee or impose discipline up to and including denying the renewal for an investigator who does not demonstrate a good faith effort to complete continuing education credit before his or her renewal date;

(4) Investigators not being audited will be required to submit with their renewal application a compliance form that includes a signed statement certifying that they have completed the continuing education requirements set forth in these rules;

(5) All licensed investigators must maintain a record of completed continuing education for a minimum of seven (7) years and provide these records to the Board upon request.

Stat. Auth.: ORS 703.480(3)
Stats. Implemented: ORS 703.480(9)
Hist.: BI 2-2000, f. 2-25-00, cert. ef. 3-1-00; Suspended by BI 5-2001(Temp), f. 12-6-01, cert. ef. 12-7-01 thru 6-5-02; BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; Suspended by BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

220-050-0300
Continuing Education (CE) Guidelines

(1) Conferences and Seminars. The Department will maintain a list of organizations whose conferences, seminars, and educational meetings have standing approval. Continuing Education from other organizations will be approved on a case-by-case basis.

(a) Attendance: 1 CE Hour for each hour of speaker presentation.

(b) Lecturing: 4 CE Hours for each hour presented. (Limit of 8 hours per licensing period.)

(c) Video tapes: 1 CE Hour for each hour viewing of videotapes.

(d) Audiotapes: 1 CE Hour for each hour or listening to audiotapes.

(2) Computer Seminars One (1) CE hour of credit for each hour of attended seminar sessions hosted by computer information sources such as public record vendors; and any other similar approved seminar regarding computer information sources. Seminars on how to operate computers will not be approved for credits. (Limit 12 hours per licensing period.)

(3) Educational Institutions Educational institutions (including colleges, universities, and trade schools) will be granted standing approval when that institution is licensed or approved by the respective State's Department of Education or other State approving agency, and the course subject matter is appropriate to the investigator. This standing approval will apply to all courses related to law, criminal justice, ethics in the legal or investigative profession, and other courses that are clearly applicable to the private investigator. Others may be approved on a case-by-case basis.

(a) Attendance: 1 CE Hour for each hour of course instruction.

(b) Guest lecture: 4 CE Hours per presentation, 1 hour or more. (Limit of 8 hours per licensing period.)

(4) Publications:

(a) Articles: Six (6) CE hours for each 1000 word or more investigation related article published in a nationally recognized investigative newsletter or journal. (Limit of 12 hours per licensing period.)

(b) Books:

(A) Twenty-four (24) CE hours for writing and publishing a full-length book on a subject appropriate to investigation.

(B) Eight (8) CE hours for updating and republishing an existing full-length published book on a subject appropriate to investigation.

(C) Eight (8) CE hours for writing a single chapter of a full-length published book on a subject appropriate to investigation.

(5) Self-Study:

(a) Correspondence Courses and Online Courses: Twelve (12) CE hours per college-equivalent quarter credit hour; otherwise, Four (4) CE hours per course that is related to investigation, completed and passed.

(b) Books and Manuals: Two (2) CE hours for each non-fiction book or professional/technical manual that is related to investigation. All books published by Lawyers and Judges Publishing have standing approval. Other books will be approved on a case-by-case basis. (Limit of 8 hours per licensing period.)

(6) Television and Radio Appearances. Four (4) CE hours for each half hour appearance on a television or radio program which provides education about investigative topics. Merely appearing or participating in a show does not qualify. The program must qualify as an educational program. (Limit of 8 hours per licensing period.)

(7) Board/Committee Meetings. Two (2) CE hours will be granted for attending a Board or Committee Meeting. No CE hours will be granted for attending investigator association board or committee meetings. (Limit of 4 hours per licensing period.)

(8) Network Meetings. Two (2) CE hours will be granted for approved network meetings. Meetings must be noticed and structured, and proof of attendance that includes topics covered must be supplied to attendees by the person organizing the meeting. A minimum of four investigators must be in attendance. (Limit of 8 hours per licensing period.)

Stat. Auth.: ORS 703.480(1)
Stats. Implemented: ORS 703.447
Hist.: BI 1-2003, f. 6-10-03, cert. ef. 7-1-03; BI 1-2005(Temp), f. & cert. ef. 12-30-05 thru 6-15-06

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Board of Massage Therapists
Chapter 334

Rule Caption: Written Exam Changes & Renewal Cycle Changes.
Adm. Order No.: BMT 1-2006
Filed with Sec. of State: 1-5-2006
Certified to be Effective: 1-5-06
Notice Publication Date: 12-1-05
Rules Amended: 334-010-0010, 334-010-0015, 334-010-0017, 334-010-0033, 334-010-0050
Subject: 334-010-0010 allows an applicant to take either the NCETM, the NCETMB or the NESL exam for the written exam as required to become licensed.

The remaining rules clarify the new renewal cycle, effective January 5, 2006.

Rules Coordinator: Michelle Sherman—(503) 365-8657

334-010-0010
Examination

(1) The L.M.T. examination shall be held at least twice annually.

(2) The applicant shall be notified by mail, postmarked at least two weeks before the scheduled exam, unless otherwise waived by the applicant, of the time and place.

(3) Applicants who request an extension in writing to the Board postmarked 7 days in advance for the practical examination may have their examination fees apply to a subsequent examination so long as the applicant sits for the examination within a year of the date of the extension. Only one extension shall be permitted. Exceptions will be reviewed on a case-by-case basis by the Board. Refund of the examination fee will be granted should the applicant request a refund in writing postmarked at least 7 days prior to the exam.

(4) Applicants are required to take and pass the NCETMB, the NCETM, or the NESL written exam and the Oregon practical examination, which includes a written test on Oregon statutes and administrative rules.

(5) **Failure to Pass** An applicant must pass the practical examination within 24 months of the initial examination with a maximum of three attempts. If the applicant fails to pass in three attempts, he/she must re-establish eligibility to apply and sit for the massage therapist licensing examinations by undertaking and satisfactorily completing a Board approved program of remedial study from a certified school and/or instructor(s).

(6) Applicants for reciprocity or indorsement who are sitting only for the practical examination shall take the examination during the regularly scheduled examination dates.

(7) The Board may elect to administer examinations at other than regularly scheduled times if such administration:

(a) Does not interfere with the normal workload and work duties of the Board and its staff; and

(b) Additional costs associated with administering an unscheduled examination are paid by the applicant.

(8) **Examinee Conduct** An examinee, whose conduct interferes with the testing process or whose behavior violates ethical practices or jeopardizes the safety of a volunteer subject, may be dismissed and disqualified from examination. Such conduct includes but is not limited to the following behaviors:

(a) Giving or receiving examination data, either directly or indirectly, during the examination process;

(b) Failure to follow written or oral instructions relative to conducting the examination, including termination times and procedures;

(c) Endangering the life or health of a model, other examinees, or examination staff;

(d) Introducing unauthorized materials during any portion of the examination;

(e) Attempting to remove examination materials or notations from the testing site; or

(9) Violating the credentialing process such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the licensing examination on one's behalf.

(10) Test questions, scoring keys, and other examination data used to administer the qualifying examination are exempt from disclosure under ORS 192.410 to 192.505 as amended.

(11) The Board may release statistical information regarding examination pass/fail rates by group, type of examination, school, year, and subject area to any interested party.

(12) All examinations are given in the English language. An applicant is presumed to possess sufficient sensory, visual, hearing and psychomotor skills to independently perform massage and bodywork skills.

(13) **Applicants with Special Needs** An applicant with special needs may apply to the Board for the provision of special conditions to complete the examination.

(a) The Board may require proof, provided by a qualified professional on letterhead, of the nature of the special need and type of special conditions recommended to complete the exam.

(b) A request for special conditions must be made to the Board in writing no later than three weeks prior to the date of the examination.

Stat. Auth.: ORS 183, 687.121 & SB 1127
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0004; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1982, f. & ef. 7-21-82; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98, Renumbered from 334-010-0021 [Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Sections (6) - (20)(h) Renumbered from 334-030-0020]; BMT 1-1999(Temp), f. 6-14-99, cert. ef. 7-4-99 thru 12-31-99; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2002(Temp), f. & cert. ef. 1-9-02 thru 7-5-02; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 4-2005(Temp), f. & cert. ef. 9-19-05 thru 3-12-06; BMT 1-2006, f. & cert. ef. 1-5-06

334-010-0015
Licensure

(1) An applicant for a renewal or initial massage therapist license shall complete, without alterations, an application furnished by the Board.

(2) Application for a massage therapist license shall contain information stating whether the applicant has ever been arrested or convicted of a misdemeanor or crime and if so, stating the nature of the offense, the location of the arrest or conviction and the date(s) of occurrence(s).

(3) Applicants for renewal of licensure shall sign a statement of completion of 25 hours of continuing education.

(4) Applicants for initial licensure must apply within one year of the successful completion of the license examination.

(a) If an applicant does not apply within one year, then re-examination shall be required.

(b) At the time of re-examination, the applicant must meet all current licensing requirements and submit original documents as required by the Board.

(5) All applicants for initial, renewal, or reinstated license must sign a statement verifying that they have read all current Oregon Statutes (ORS 687), Rules (OAR 334), and policy statements of the Board.

(6) Licenses issued by the Board shall not be transferable.

Stat. Auth.: ORS 687.121 & 687.051
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0006; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06

334-010-0017
Lapsed License

(1) The massage therapist license shall be considered lapsed if an individual fails to pay the licensing fee when due or fails to meet continuing education requirements.

(2) During the lapsed status, no such person shall practice massage in the State of Oregon.

(3) A license in lapsed status shall not be placed in an inactive status.

(4) If the lapsed license is activated within the first two years of lapsed status, the following must be included with the completed application:

(a) Late fee;

(b) Current licensing fee;

(c) Proof of 25 hours of continuing education.

(5) An applicant whose license has been lapsed for more than two years but less than three years may reinstate by including the following with the completed application:

(a) Payment of the licensing fee applicable for the two years of the lapsed license;

(b) Payment of the current fee for activation of the license;

(c) Late fee payment;

(d) Proof of 25 hours continuing education for the two year lapsed period; and

(e) Proof of 25 hours continuing education for the current licensing period.

(6) All information required for restoring a lapsed license must be received within three years of the date of expiration. Thereafter, one must apply as a new applicant.

(7) **Inactive License Prior to Lapsed Status** If the license was in an inactive status prior to the current lapsed status, the applicant shall provide the following with the completed application:

(a) Payment of the current licensing fee for activation of the license;

(b) If the license is in the third year of lapsed status but still eligible for reactivation, payment of the licensing fee applicable for the two years of the lapsed license and payment of the current licensing fee are both required;

(c) Late payment fee;

(d) Proof of 25 hours of continuing education for the two year inactive period; and

(e) Proof of 25 hours of continuing education to activate the license; or

(f) If in the third year of lapsed status, proof of an additional 25 hours of continuing education for the two years of lapsed status.

Stat. Auth.: ORS 183, 687.121 & SB 1127
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06

334-010-0033
Fees

Licensure fees will not be refunded.

(1) The fee for an initial and renewal license is $100 per biennium.

(2) The fee for inactive license is $50 per biennium.

(3) The fee for the practical examination and retake is $150.

(4) Application fee $50.

(5) Examination fee will be refunded only when the applicant is unqualified by Oregon statutes and no inquiry or investigation is initiated.

(6) A $25 fee will be charged per week, to a maximum of $250, for any late license renewal.

(7) The temporary license fee is $25.

(8) The fee for mailing list is $100.

(9) The fee for a license reprint is $5.

(10) The fee for license verification is $5.00.

Stat. Auth.: ORS 183, 687.121 & SB 1127
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06

334-010-0050
Continuing Education

The intent of Continuing Education is to protect the public by maintaining and enhancing licensees' professional knowledge and skills relating to massage and bodywork practice.

(1) Each licensee shall complete 25 hours of continuing education each biennium. At renewal time, each licensee shall sign and submit a Board supplied CE form indicating they have completed the required hours of continuing education. At least 12 hours must be contact hours defined as instruction involving other massage and bodywork practitioners. The remaining 13 hours may be contact hours or in areas as defined on Board supplied CE form.

(2) The continuing education requirement shall not apply to a licensee's first license renewal.

(3) Continuing education must be completed within the renewal period. Contact hours taken in excess of the total number required may only be carried over to the next subsequent renewal period.

(4) Continuing education records shall be maintained by each licensee for a minimum of five years.

(5) If the Board finds indications of fraud or falsification of records, investigative action shall be instituted. Findings may result in disciplinary action including revocation of the licensee's license.

(6) Failure to complete continuing education hours by the time of renewal may result in denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in suspension of the license to practice massage.

(7) Continuing education must be in areas related to the practice of massage or bodywork including theory, research, technique or business development.

Stat. Auth.: ORS 687.081, 687.121 & 687.122
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f.& cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06

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Board of Nursing
Chapter 851

Adm. Order No.: BN 9-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-21-05
Notice Publication Date: 10-1-05
Rules Amended: 851-031-0006, 851-031-0045
Subject: These rules establish the standards for licensure of Registered Nurses and Licensed Practical Nurses. This rule amendment updates English language proficiency minimum standards for foreign nurses.
Rules Coordinator: KC Cotton—(971) 673-0638

851-031-0006
General Eligibility, Limits on Eligibility, and Requirements

(1) Eligibility:

(a) Graduation or program completion from an approved nursing program as documented in an official transcript or credentials evaluation:

(A) An applicant for the practical nurse examination shall show evidence of having completed a state approved Practical Nursing, Diploma, Associate Degree, Baccalaureate Degree or Master's Degree Program in Nursing.

(B) An applicant for the registered nurse examination shall show evidence of having completed, a state approved pre-licensure, Diploma, Associate Degree, Baccalaureate Degree or Master's Degree Program in Nursing.

(C) An applicant who graduated from a nursing program outside the United States shall show evidence that the program is equivalent to Practical Nursing, Diploma, Associate Degree, Baccalaureate Degree or Master's Degree Program in Nursing in the U.S.

(b) Successful completion of the examination; and

(c) Current or recent nursing practice as defined in OAR 851-031-0006(3)(e); and

(d) English language proficiency as defined in OAR 851-031-0006(3)(f).

(2) Limits on Eligibility:

(a) If an applicant has a major physical or mental condition that could affect the applicant's ability to practice nursing safely, a physical or psychological assessment may be required, to assist in the determination as to whether or not the applicant's physical or mental health is adequate to serve the public safely.

(b) If an applicant has been arrested, charged or convicted of any criminal offense a determination shall then be made as to whether the arrest, charge or conviction bears a demonstrable relationship to the practice of nursing, in which case licensure may be denied.

(c) If the applicant has past, current or pending disciplinary action in another licensing jurisdiction, the Board shall investigate and may deny licensure.

(d) If the applicant falsifies an application, supplies misleading information or withholds information, such action may be grounds for denial or revocation.

(e) No state constructed examination, challenge examination or other method of licensure examination will be accepted.

(f) The Board shall be the sole judge of all credentials.

(3) General Requirements:

(a) Completed application using forms and instructions provided by the Board, and payment of appropriate fees established by the Board.

(b) Official transcript or credentials evaluation:

(A) Graduates of United States schools of nursing must document graduation or program completion.

(B) Graduates of schools of nursing outside the United States must document graduation and educational equivalency with a credentials evaluation.

(c) Picture Identification:

(A) Passport photograph taken within six months of the date of application;

(B) Submitted on a form, provided by the Board, that has been signed by the applicant;

(C) With photograph and signature of applicant verified by the Dean/Director of school or a Notary Public.

(d) Documentation of successful completion of the examination:

(A) A registered nurse applicant for licensure shall have achieved the following minimum score on the licensure examination:

(i) Between June 1951 up to and including February 1982, a standard score of 350 or above in each of the five test sections comprising the examination;

(ii) Between July 1982 through June 1988, a comprehensive standard minimum score of 1600 or above;

(iii) Beginning February 1989, a designation of a "Pass" score.

(B) A practical nurse applicant for licensure shall have achieved the following minimum standard score on the licensure examination:

(i) Between June 1951 up to and including April 1988, a comprehensive standard score of 350 or above;

(ii) Beginning October 1988, a designation of a "Pass" score.

(e) Documentation of meeting the nursing practice requirement.

(A) 960 hours of nursing practice, at the level of license sought, within the five years immediately preceding application for licensure; or

(B) Graduation from a Board-approved school of nursing or completion of an approved program within the five years immediately preceding application for licensure; or

(C) Completion of an Oregon State Board of Nursing approved reentry program at the level of license sought, within the two years immediately preceding issuance of licensure.

(f) Documentation of English language proficiency by one of the following methods:

(A) Graduation from or completion of an approved program in the United States in which:

(i) All classroom instruction was in English; and

(ii) All nursing textbooks were in English; and

(iii) The preponderance of clinical experience was in English; or

(B) Graduation from a school of nursing outside of the United States in which:

(i) All classroom instruction was in English; and

(ii) All nursing textbooks were in English; and

(iii) The preponderance of clinical experience was in English; or

(C) Documentation of nursing practice, in English, at level of license sought, in another state in the United States, for at least 960 hours, in the two years preceding application for licensure; or

(D) Successful completion of one of the following:

(i) CGFNS Certificate; or

(ii) Passing the Test of English as a Foreign Language (TOEFL) within two years of application for licensure with an overall score as follows:

(a) TOEFL written 560;

(b) TOEFL CBT (computer based test) 220;

(c) TOEFL iBT (internet based test) 83; or

(iii) Passing the Test of English for International Communication (TOEIC) examination within two years of application for licensure with a minimum score of 780; or

(iv) Passing the International English Language Testing System (IELTS) (Academic Module) within two years of application for licensure with an overall score of 6.5 with a minimum of 6.0 all modules; or

(v) VISA screen certificate; or

(vi) Passing the NCLEX examination in another state; or

(vii) Graduation from a post-licensure nursing education program in the United States.

(g) Use of documented legal name for licensure. Documents which may be submitted to document a legal name change include birth certificate, marriage license, court order or decree.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.040, 678.050 & 678.150
Hist.: BN 10-1998, f. & cert. ef. 8-7-98; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2003, f. & cert. ef. 10-2-03; BN 9-2005, f. & cert. ef. 12-21-05

851-031-0045
Limited License for Certain Students in Oregon Educational Programs

(1) RNs from other countries who enroll for graduate study in Oregon.

(a) Required licensure:

(A) When the nature of the graduate program includes no clinical component or a clinical component which requires no direct patient care, the international nurse is required to hold either a limited or full Oregon RN license.

(B) When the nature of the graduate program includes a clinical component with direct patient care experience (e.g. nurse practitioner programs) an Oregon RN license is required prior to clinical experience.

(b) Limited License Requirements:

(A) Completed application using forms and instructions provided by the Board and payment of appropriate fees established by the Board.

(B) Graduation from an educational program that is equivalent to nursing education in the United States documented by a Board approved credentials evaluation service.

(C) Demonstration of English language proficiency by one of the following methods:

(i) Pass an English language proficiency test that meets the standards as defined in OAR 851-031-0006(3)(f)(D)(ii)(iii) or (iv); or

(ii) Documentation of holding a Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate; or

(iii) Graduation from a school of nursing outside of the United States in which all classroom instruction was in English; and all nursing textbooks were in English; and the preponderance of clinical experience was in English; or

(iv) Documentation of practice as a registered nurse, in English, in another state in the United States, for at least 960 hours, in the two years preceding application for licensure.

(D) A passing score on the licensing examination as defined in OAR 851-031-0005(10) or on the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination.

(c) Limited licenses issued under this section shall be valid for a period of two years from the date of issuance. After that period, the limited license may be extended annually for a one year period upon application by

licensee, payment of the appropriate fee, and demonstration of continued enrollment in the graduate program.

(d) The limited license issued under this section is to be used only for study in the graduate program.

(2) RNs from other countries who seek short term educational experience in Oregon:

(a) Required licensure:

(A) When the nature of the short-term educational experience includes the practice of nursing, the international nurse is required to hold a limited RN license.

(B) When the nature of the short-term educational experience is observation only, the international nurse does not require an Oregon license. “Observation only” means that the individual is not responsible for nor a participant in any aspect of nursing practice.

(b) Limited license requirements:

(A) Completed application using forms and instructions provided by the Board and payment of appropriate fees.

(B) Demonstration of English language proficiency by one of the following methods:

(i) Pass an English language proficiency test that meets the standards as defined in OAR 851-031-0006(3)(f)(D)(ii), (iii) or (iv); or

(ii) Documentation of holding a Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate; or

(iii) Graduation from a school of nursing outside of the United States in which all classroom instruction was in English; and all nursing textbooks were in English; and the preponderance of clinical experience was in English; or

(iv) Documentation of practice as a registered nurse, in English, in another state in the United States, for at least 960 hours, in the two years preceding application for licensure.

(C) Graduation from an educational program that is equivalent to nursing education in the United States documented by a Board approved credentials evaluation service.

(D) A passing score on the licensing examination as defined in OAR 851-031-0005(10) or on the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination.

(E) A contract with an organization or agency in Oregon for a planned learning experience including at least the planned learning outcomes, dates for the experience, and how the outcomes will be achieved.

(c) Limited licenses issued under this section shall be valid for practice only within the contracted learning experience, and shall be issued to the last date of the learning contract up to a maximum of six months.

(3) Students from other countries in established exchange programs with Oregon schools:

(a) When a nursing student from another country engages in clinical experience as part of an established exchange program, a limited license is required.

(b) Limited license requirements:

(A) Completed application using forms and instructions provided by the Board and payment of appropriate fees established by the Board;

(B) Enrollment in a pre-licensure nursing program in another country;

(C) Acceptance by an approved Oregon nursing program for exchange experience; and

(D) Demonstration of English language proficiency by one of the following methods:

(i) Pass an English language proficiency test that meets the standards as defined in OAR 851-031-0006(3)(f)(D)(ii), (iii) or (iv); or

(ii) Documentation of holding a Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate; or

(iii) Graduation from a school of nursing outside of the United States in which all classroom instruction was in English; and all nursing textbooks were in English; and the preponderance of clinical experience was in English; or

(iv) Documentation of practice as a registered nurse, in English, in another state in the United States, for at least 960 hours, in the two years preceding application for licensure.

(c) Limited licenses issued under this section shall be valid only for student experience within the exchange program, and shall be valid for the term of the exchange agreement up to a maximum of one year.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.040, 678.050, 678.101, 678.150 & 678.410
Hist.: BN 11-1999. f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2005, f. & cert. ef. 12-21-05

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Adm. Order No.: BN 10-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-21-05
Notice Publication Date: 10-1-05
Rules Amended: 851-045-0025
Subject: These rules cover the standards and scope of practice for the Licensed Practical Nurse and Registered Nurse and also the imposition of civil penalties.

This rule amendment is to clarify the calculation of civil penalties imposed against licensees who continue to practice after their license has expired. Additionally, this amendment includes advance practice nursing imposters and the appropriate civil penalty for Certified Registered Nurse Anesthetists (CRNAs) who continue to practice with a current Oregon license, but without the requisite valid national certification.

Rules Coordinator: KC Cotton—(971) 673-0638

851-045-0025
Imposition of Civil Penalties

(1) Imposition of a civil penalty does not preclude disciplinary sanction against the nurse’s license. Disciplinary sanction against the nurse’s license does not preclude imposing a civil penalty. Criminal conviction does not preclude imposition of a civil penalty for the same offense.

(2) Civil penalties may be imposed according to the following schedule:

(a) Practicing nursing as a Licensed Practical Nurse (LPN), Registered Nurse (RN), Nurse Practitioner (NP), Certified Registered Nurse Anesthetist (CRNA) or Clinical Nurse Specialist (CNS) without a current license or certificate or Board required concurrent national certification; or prescribing, dispensing, or distributing drugs without current prescription writing authority, due to failure to renew and continuing to practice $100 each 30 day period, or part thereof, up to $5,000.

(b) Using a limited license to practice nursing for other than its intended purpose $100 per day.

(c) Nurses not licensed in Oregon hired to meet a temporary staffing shortage who fail to make application for an Oregon license by the day placed on staff $100 per day up to $3,000.

(d) Practicing nursing prior to obtaining an Oregon license by examination or endorsement $100 per day.

(e) Nurse imposter. up to $5,000. “Nurse Imposter” means an individual who has not attended or completed a nursing education program or who is ineligible for nursing licensure or certification as a LPN, RN, NP, CRNA or CNS and who practices or offers to practice nursing or uses any title, abbreviation, card or device to indicate that the individual is so licensed or certified to practice nursing in Oregon.

(f) Conduct derogatory to the standards of nursing $500 — $5,000.

The following factors will be considered in determining the dollar amount, to include, but not be limited to:

(A) Intent;

(B) Damage and/or injury to the client;

(C) History of performance in current and former employment settings;

(D) Potential danger to the public health, safety and welfare;

(E) Prior offenses or violations including prior complaints filed with the Board and past disciplinary actions taken by the Board;

(F) Severity of the incident;

(G) Duration of the incident;

(H) Economic impact on the person.

(g) Violation of any disciplinary sanction imposed by the Board of Nursing $500 — $2,500.

(h) Conviction of a crime which relates adversely to the practice of nursing or the ability to safely practice $1,000 — $5,000.

(i) Gross incompetence in the practice of nursing $2,500 — $5,000.

(j) Gross negligence in the practice of nursing $2,500 — $5,000.

(k) Employing any person without a current Oregon LPN, RN or CRNA license, nurse practitioner or clinical nurse specialist certificate to function as a LPN, RN, CRNA, nurse practitioner or clinical nurse specialist subject to the following conditions:

(A) Knowingly hiring an individual in a position of a licensed nurse when the individual does not have a current, valid Oregon license or certificate $500 — $5,000;

(B) Allowing an individual to continue practicing as a LPN, RN, NP, CRNA or CNS knowing that the individual does not have a current, valid Oregon license or certificate $500 — $5,000.

(l) Employing a LPN, RN, NP, CRNA or CNS without a procedure in place for checking the current status of that nurse’s license or certificate to ensure that only those nurses with a current, valid Oregon license or certificate be allowed to practice nursing $500 — $5,000.

(m) Supplying false information regarding conviction of a crime, discipline in another state, physical or mental illness/physical handicap, or

meeting the practice requirement on an application for initial licensure or relicensure, certification or recertification $500 — $5,000.

Stat. Auth.: ORS 678.117 & 678.370
Stats. Implemented: ORS 678.117 & 678.370
Hist.: NER 1-1986, f. & ef. 4-3-86; NER 2-1986, f. & ef. 4-9-86; NB 1-1988, f. & cert. ef. 4-18-88; NB 6-1989, f. & cert. ef. 10-4-89; NB 8-1993, f. & cert. ef. 8-23-93; NB 6-1994, f. & cert. ef. 9-28-94; BN 1-2000, f. & cert. ef. 2-25-00; BN 3-2002, f. & cert. ef. 3-5-02; BN 10-2005, f. & cert. ef. 12-21-05

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Adm. Order No.: BN 11-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-21-05
Notice Publication Date: 10-1-05
Rules Amended: 851-050-0131
Subject: The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. The amendments add the September, October and November 2005 updates to Drug Facts and Comparisons to the formulary.
Rules Coordinator: KC Cotton—(971) 673-0638

851-050-0131
Formulary for Nurse Practitioners with Prescriptive Authority

(1) The following definitions apply for the purpose of these rules:

(a) "Appliance or device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurse practitioners with prescriptive authority shall be all the drugs in the Drug Facts and Comparisons dated November 2005 with the exception of certain drugs and drug groups, which are listed below.

(c) "Board" means the Oregon State Board of Nursing.

(2) The Board as authorized by ORS 678.385 (1993), shall determine the drugs which nurse practitioners may prescribe, shall periodically revise the formulary by rulemaking hearing at each regular Board meeting and shall transmit the list of those drugs which are exceptions to the formulary, and which nurse practitioners may not prescribe, to nurse practitioners with prescriptive authority and other interested parties.

(3) The formulary is constructed based on the following premises:

(a) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;

(b) Nurse practitioner prescribing is limited by the nurse practitioner's scope of practice and knowledge base within that scope of practice;

(c) Nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005;

(d) Nurse practitioners may prescribe drugs for conditions the nurse practitioner does not routinely treat within the scope of their practice provided there is ongoing consultation/ collaboration with another health care provider who has the authority and experience to prescribe the drug(s);

(e) Nurse practitioners shall be held strictly accountable for their prescribing decisions;

(f) All drugs on the formulary shall have Food and Drug Administration (FDA) approval.

(4) Nurse practitioners with prescriptive authority are authorized to prescribe:

(a) All over the counter drugs;

(b) Appliances and devices.

(5) Nurse practitioners are authorized to prescribe the following drugs as listed in Drug Facts and Comparisons dated November 2005:

(a) Nutrients and Nutritional Agents — all drugs except Flavocoxid (Limbrel).

(b) Hematological Agents — all drugs except Drotrecogin Alfa (Xigris); and Treprostinil Sodium (Romodulin).

(c) Endocrine and Metabolic Agents — all drugs except:

(A) I 131;
(B) Gallium Nitrate; and
(C) Mifepristone (Mifeprex); and
(D) Abarelix (Plenaxis).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;
(B) Fenoldopam Mesylate (Corlopam);
(C) Dofetilide (Tikosyn); and
(D) Bosentan (Tracleer).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

(g) Central Nervous System Agents:

(A) Class II Controlled Substances — Only the following drugs:

(i) Tincture of opium;
(ii) Codeine;
(iii) Hydromorphone;
(iv) Morphine;
(v) Oxycodone, Oxymorphone;
(vi) Topical Cocaine Extracts and Compounds;
(vii) Fentanyl;
(viii) Meperidine;
(ix) Amphetamines;
(x) Methylphenidates;
(xi) Pentobarbital;
(xii) Secobarbital;
(xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-050-0170); and
(xiv) Levorphanol.

(B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide; and

(C) Chymopapain is excluded.
(D) Ziconotide (Prialt) is excluded.
(E) Sodium Oxybate (Xyrem) is excluded.

(h) Gastrointestinal Agents — all drugs except: Monooctanoin;

(i) Anti-infectives, Systemic — all drugs;

(j) Biological and Immunologic Agents — all drugs except Basiliximab (Simulect);

(k) Dermatological Agents — all drugs except Psoralens;

(l) Ophthalmic and Otic Agents — all drugs except:

(A) Punctal plugs;
(B) Collagen Implants;
(C) Indocyanine Green;
(D) Hydroxypropal (Methyl) Cellulose;
(E) Polydimethylsiloxane;
(F) Fomivirsen Sodium (Vitravene);
(G) Verteporfin;
(H) Levobetaxolol HCL (Betaxon);
(I) Travoprost (Travatan);
(J) Bimatoprost (Lumigan); and
(K) Unoprostone Isopropyl (Rescula);
(L) Pegaptanib Sodium (Macugen);
(M) Triptan Blue (VisionBlue); and
(N) Retisert.

(m) Antineoplastic Agents — all drugs except:

(A) NCI Investigational Agents;
(B) Samarium Sm53;
(C) Denileukin Diftitox (Ontak);
(D) BCG, Intravesical (Pacis);
(E) Arsenic Trioxide (Trisenox);
(F) Ibritumomab Tiuxetan (Zevalin);
(G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar);
(H) Sclerosol; and
(I) Clofarabine (Clolar).

(n) Diagnostic Aids:

(A) All drugs except Arbutamine (GenESA);
(B) Thyrotropin Alfa (Thyrogen);
(C) Miscellaneous Radiopaque agents — no drugs from this category except:

(i) Iopamidol;
(ii) Iohexol; and
(iii) Ioxilan (Oxilan).

Stat. Auth.: ORS 678.375 & 678.385
Stats. Implemented: ORS 678.385
Hist.: NB 11-1993(Temp), f. 10-26-93, cert. ef. 11-4-93; NB 2-1994, f. & cert. ef. 4-15-94; NB 7-1994, f. & cert. ef. 9-28-94; NB 3-1995, f. & cert. ef. 4-12-95; NB 6-1995(Temp), f. & cert. ef. 6-15-95; NB 8-1995, f. & cert. ef. 6-29-95; NB 11-1995, f. & cert. ef. 10-9-95; NB 1-1996, f. & cert. ef. 2-29-96; NB 3-1996, f. & cert. ef. 6-11-96; NB 8-1996, f. & cert. ef. 10-30-96; NB 10-1996, f. & cert. ef. 12-2-96; NB 5-1997, f. & cert. ef. 3-6-97; NB 7-1997, f. & cert. ef. 5-13-97; NB 8-1997, f. & cert. ef. 7-1-97; NB 13-1997, f. & cert. ef. 9-29-97; NB 14-1997, f. & cert. ef. 12-11-97; BN 4-1998, f. & cert. ef. 3-13-98; BN 5-1998, f. & cert. ef. 5-11-98; BN 8-1998, f. & cert. ef. 7-16-98; BN 12-1998, f. & cert. ef. 9-22-98; BN 13-1998, f. & cert. ef. 12-1-98; BN 1-1999, f. & cert. ef. 3-4-99; BN 3-1999, f. & cert. ef. 5-4-99; BN 5-1999, f. & cert. ef. 7-1-99; BN 9-1999, f. & cert. ef. 10-20-99; BN 13-1999, f. & cert. ef. 12-1-99; BN 3-2000, f. & cert. ef. 2-25-00; BN 5-2000, f. & cert. ef. 4-24-00; BN 8-2000, f. & cert. ef. 7-3-00; BN 9-2000, f. & cert. ef. 9-18-00; BN 10-2000, f. & cert. ef. 12-15-00; BN 2-2001, f. & cert. ef. 2-21-01; BN 6-2001, f. & cert. ef. 4-24-01; BN 9-2001, f. & cert. ef. 7-9-01; BN 13-2001, f. & cert. ef. 10-16-01; BN 4-2002, f. & cert. ef. 3-5-02; BN 11-2002, f. & cert. ef. 4-25-02; BN 14-2002, f. & cert. ef. 7-17-02; BN 19-2002, f. & cert. ef. 10-18-02; BN 21-2002, f. & cert. ef. 12-17-02; BN 2-2003, f. & cert. ef. 3-6-03; BN 4-2003,

f. & cert. ef. 4-23-03; BN 8-2003, f. & cert. ef. 7-7-03; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2003, f. & cert. ef. 12-9-03; BN 6-2004, f. & cert. ef. 2-26-04; BN 10-2004, f. & cert. ef. 5-4-04; BN 12-2004, f. & cert. ef. 7-13-04; BN 15-2004, f. & cert. ef. 10-26-04; BN 16-2004, f. & cert. ef. 11-30-04; BN 2-2005, f. & cert. ef. 2-17-05; BN 3-2005, f. & cert. ef. 4-26-05; BN 4-2005, f. & cert. ef. 6-30-05; BN 8-2005, f. & cert. ef. 10-13-05; BN 11-2005, f. & cert. ef. 12-21-05

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Adm. Order No.: BN 12-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-21-05
Notice Publication Date: 10-1-05
Rules Amended: 851-061-0090
Subject: These rules cover the standards for training programs for Nursing Assistants and Medication Aides. This rule amendment adds residential care facilities as possible clinical sites for medication aide training programs.
Rules Coordinator: KC Cotton—(971) 673-0638

851-061-0090
Standards for Program Approval: Curriculum

(1) Board-approved curriculum shall be used in approved nursing assistant level 1 and medication aide training programs.

(2) A nursing assistant level 1 training program shall consist of:

(a) At least 150 hours of instruction divided into 75 hours of classroom instruction and 75 hours of supervised clinical experience;

(b) At least 24 hours of classroom/laboratory instruction with return student demonstrations of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients; and

(c) At least 40 hours of clinical experience in a licensed nursing facility, except that pilot programs (OAR 851-061-0030) shall provide clinical experience as approved for pilot status.

(3) A nursing assistant level 2 training program will have Board approved:

(a) Standardized category curriculum that may vary in training hours from other Board approved standardized category curricula; and

(b) Competency evaluation.

(4) Medication aide training program classroom and clinical instruction hours:

(a) A medication aide training program shall consist of at least 80 hours of instruction divided into at least 24 hours of classroom instruction and at least 24 hours of 1:1 supervised clinical experience.

(b) All clinical hours shall be completed at one site (licensed nursing facility, hospital, assisted living facility, or residential care facility).

(c) All required clinical hours shall be in medication administration related activities.

(5) Admission requirements for medication aide training programs shall be:

(a) Current, unencumbered CNA 1 status on the Oregon CNA Registry maintained by the Board;

(b) Documentation of graduation from an approved basic nursing assistant level 1 training program at least six months prior to enrollment in the medication aide training program; and

(c) Documentation of at least six months full time experience as a nursing assistant level 1 or the equivalent in part time experience since graduation from a basic nursing assistant training program.

(6) Classroom and clinical faculty/student ratios for nursing assistant level 1 and medication aide training programs:

(a) Classroom: The ratio of students per instructor shall be such that each trainee is provided with registered nurse assistance and supervision and be no more than 20 students per instructor for classroom.

(b) Clinical:

(A) The ratio of students per instructor in a nursing assistant level 1 training program shall be no more than 10 students per instructor at all times during the clinical experience.

(B) The ratio of students per instructor in a medication aide training program shall begin with a ratio of one clinical preceptor to one medication aide student during the first 24 hours of the clinical experience. Less intensive supervision (either more students per preceptor or less direct supervision by preceptor) may occur with satisfactory evaluation and approval of the clinical preceptor and primary instructor.

(7) Clinical experience and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(a) A clinical schedule shall be prepared for all students prior to the beginning of the clinical experience, and provided to the clinical facility director of nursing, the clinical instructor/preceptor, and the student.

(b) Student practice and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(A) Students may provide direct client care within their authorized duties under the supervision of an approved instructor.

(B) Students shall be identified as students at all times while in the clinical area.

(C) Students must not be counted as staff or utilized as staff during the hours that are scheduled for clinical experience.

(D) Students may be on a unit, floor or wing of a facility only under direct supervision of a qualified instructor.

(E) Students shall not be on a unit, floor, or wing without a CNA or licensed nurse.

(F) Students shall provide care only to the level they have been taught and determined competent by the approved clinical instructor.

(c) In addition, for medication aide training programs, the clinical experience shall consist of a minimum of 10 medication passes to a minimum of five residents/patients during the first 20 hours of supervised clinical experience;

(8) Program completion:

(a) Completion of a nursing assistant level 1 or medication aide training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum;

(B) The student has successfully demonstrated the required skills on the laboratory and clinical skills checklist;

(C) The student has achieved a score of 75% or higher on the program's final examination;

(D) The student has successfully completed the clinical portion of the program no later than four months following the last date of classroom instruction; and

(E) In addition, for nursing assistant level 1 training programs, the student has successfully completed current, adult CPR certification in accordance with Board-approved curriculum.

(b) Completion of a nursing assistant level 2 training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum; and

(B) The student has successfully completed the competency evaluation.

Stat. Auth.: ORS 678.440 & 678.444
Stats. Implemented: ORS 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 15-2002, f. & cert. ef. 7-17-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 12-2005, f. & cert. ef. 12-21-05

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Adm. Order No.: BN 13-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-21-05
Notice Publication Date: 10-1-05
Rules Amended: 851-062-0010
Subject: These rules cover the standards for certification of Nursing Assistants and Medication Aides. This rule amendment to the definitions of "monitoring" and "supervision" would help clarify the difference between working under monitoring in a community-based setting and working under supervision in a hospital or nursing home.
Rules Coordinator: KC Cotton—(971) 673-0638

851-062-0010
Definitions

(1) "Application" means a request for certification including all information identified on a form supplied by the Board and payment of required fee.

(2) "Approved Nursing Program" means a pre-licensure educational program approved by the Board for registered or practical nurse scope of practice, or an educational program in another state or jurisdiction approved by the licensing board for nurses or other appropriate accrediting agency for that state.

(3) "Certificate of Completion" means a document meeting the standards set in OAR 851-061-0100(3)(a-i) and awarded upon successfully meeting all requirements of a nursing assistant or medication aide training program.

(4) "Certified Medication Aide (CMA)" means a Certified Nursing Assistant who has had additional training in administration of noninjectable medication and holds a current unencumbered Oregon CMA Certificate.

(5) "Certified Nursing Assistant (CNA)" means a person who holds a current Oregon CNA certificate by meeting the requirements specified in these rules; whose name is listed on the CNA Registry; and who assists licensed nursing personnel in the provision of nursing care. The phrase

Certified Nursing Assistant and the acronym CNA are generic and may refer to CNA 1, CNA 2 or all CNAs.

(6) “Certified Nursing Assistant 1 (CNA1)” means a person who holds a current Oregon CNA 1 certificate and who assists licensed nursing personnel in the provision of nursing care.

(7) “Certified Nursing Assistant 2 (CNA 2)” means a CNA 1 who has met requirements specified in these rules for one or more of the CNA 2 categories.

(8) “Client” means the individual who is provided care by the CNA or CMA including a person who may be referred to as “patient” or “resident” in some settings.

(9) “CNA Registry” means the listing of Oregon Certified Nursing Assistants maintained by the Board.

(10) “Competency evaluation” means the Board-approved process for determining competency.

(11) “Completed Application” means a signed application, paid application fee and submission of all supporting documents related to certification requirements.

(12) “Completed Application Process” means a completed application, a Law Enforcement Data System (LEDS) check including any subsequent investigation; successful competency examination, if required; and final review for issue or denial.

(13) “Endorsement” means the process of certification for an applicant who is trained and certified as a CNA in another state or jurisdiction.

(14) “Enrolled” means making progress toward completion of a RN or LPN nursing program, whether or not registered in the current quarter or semester, as verified by the director or dean of the program.

(15) Examinations:

(a) “Competency Examination” means the Board-approved examination administered to determine minimum competency for CNA 1 authorized duties. The competency examination consists of a written examination and a manual skills examination. The examination is administered in English.

(b) “Medication Aide Examination” means the Board-approved examination administered to determine minimum competency for CMA authorized duties. The examination is administered in English.

(16) “Full-time” means at least 32 hours of regularly scheduled work each week.

(17) “Licensed Nursing Facility” means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

(18) “Monitoring” means that a Registered Nurse assesses and plans for care of the client, assigns duties to the nursing assistant according to the nursing care plan, and evaluates client outcomes as an indicator of CNA/CMA competency.

(19) “Nurse Aide Registry” means the listing of Certified Nursing Assistants maintained by the appropriate state agency in another state or jurisdiction of the United States.

(20) “OBRA” means the Omnibus Budget Reconciliation Act of 1987, successor legislation and written directives from the Center for Medicare and Medicaid Services (CMS).

(21) “Qualifying Disability” means a diagnosed physical or mental impairment which substantially limits one or more major life activities, and is subject to the protection of the Americans with Disabilities Act (ADA).

(22) “Reactivation” is the process of renewing certification after the certificate is expired.

(23) “Reinstatement” is the process of activating a certificate after it has been subject to disciplinary sanction by the Board.

(24) “Supervision” means that the licensed nurse is physically present and accessible in the immediate client care area, is available to intervene if necessary, and periodically observes and evaluates the skills and abilities of the CNA/CMA to perform authorized duties.

(25) “Unlicensed Persons” means individuals who are not necessarily licensed or certified by this Board or another Oregon health regulatory agency but who are engaged in the care of clients.

Stat. Auth.: ORS 678.442
Stats. Implemented: ORS 678.442
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 4-2004, f. & cert. ef. 2-20-04; BN 13-2005, f. & cert. ef. 12-21-05

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Board of Parole and Post-Prison Supervision
Chapter 255

Adm. Order No.: PAR 3-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 12-29-05
Notice Publication Date: 11-1-05
Rules Amended: 255-075-0035
Subject: The amendment of this rule is necessary in order that the rule be consistent with Oregon Revised Statutes.
Rules Coordinator: Michael R. Washington—(503) 945-9009

255-075-0035
Representation/Ability to Pay Attorney Fees

(1) In all cases, the offender is entitled to representation by an attorney at the offender’s own expense.

(2) For Board cases only, if the Hearings Officer or the Board deems the offender indigent, and unable to pay for an attorney, the offender is entitled to a Board appointed attorney if the Board or Hearings Officer further finds that the offender has made a timely and colorable claim that:

(a) The offender has not committed the alleged violation;

(b) There are substantial or complex mitigating circumstances which make revocation inappropriate even if the offender admits violation or it is a matter of record; or

(c) The offender appears incapable or representing himself/herself.

(3) For Board cases only, after a Board member has approved findings that there is a timely and colorable claim, the Hearings Officer may appoint an attorney. The Hearings Officer shall notify the Board of payment to be made to the appointed attorney. When the Board approves payment for a Board appointed attorney, it shall not exceed $60 per hour and $300 per case. The attorney shall send the Board a billing within 90 days of the violation hearing.

(4) When the Hearings Officer or Board refuses to appoint an attorney, the Hearings Officer or Board shall state the grounds for refusal in the record.(5) For Local Supervisory Authority cases, the Local Supervisory Authority may set its own criteria for appointment of an attorney and shall set its own standards for payment of appointed attorneys.

Stat. Auth.: ORS 144.343
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. & ef. 2-1-79; 2PB 1-1982, f. & ef. 5-19-82; 2PB 1-1984(Temp), f. & ef. 11-19-84; 2PB 1-1985, f. & ef. 2-28-85; PAR 1-1988(Temp), f. 3-11-88, ef. 3-14-88; PAR 6-1988, f. & ef. 5-19-88; PAR 10-1988(Temp), f. & ef. 7-14-88; PAR 15-1988, f. & ef. 9-20-88; PAR 3-1989, f. 10-13-89, ef. 10-16-89; PAR 6-1991, f. & cert. ef. 10-15-91; 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 3-2001, f. & cert. ef. 2-6-01; PAR 3-2005, f. & cert. ef. 12-29-05

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Bureau of Labor and Industries
Chapter 839

Adm. Order No.: BLI 25-2005
Filed with Sec. of State: 12-22-2005
Certified to be Effective: 12-23-05
Notice Publication Date:
Rules Amended: 839-025-0750
Subject: The rule adopts prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for specified residential projects for the dates specified.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0750
Residential Prevailing Wage Rate Determinations

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

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

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

(c) *Special Prevailing Wage Rate Determination for Residential Project, Ariel South, Project #2005-05*, dated June 20, 2005, for the period of June 21, 2005 through June 30, 2006.

(d) *Special Prevailing Wage Rate Determination Extension for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004. Rate extension dated June 20, 2005, for the period of July 1, 2005 through June 30, 2006.

(e) *Special Prevailing Wage Rate Determination for Residential Project, Tri-Harbor Landing Apartments, Project #2005-06*, dated July 18, 2005, for the period of July 21, 2005 through June 30, 2006.

(f) *Special Prevailing Wage Rate Determination for Residential Project, Sunflower Park Apartments, Project #2005-07*, dated July 18, 2005, for the period of July 21, 2005 through June 30, 2006.

(g) *Amended Special Prevailing Wage Rate Determination for Residential Project, Prairie House, Project #2005-04*, dated July 20, 2005,

for the period of July 22, 2005 through June 30, 2006.

(h) *Special Prevailing Wage Rate Determination for Residential Project, Quail Run Apartments Project #2005-08*, dated August 9, 2005, for the period of August 10, 2005 through June 30, 2006.

(i) *Special Prevailing Wage Rate Determination for Residential Project, Hazedel Seniors Limited Partnership, Project #2005-09*, dated August 26, 2005, for the period of August 29, 2005 through June 30, 2006.

(j) *Special Prevailing Wage Rate Determination for Residential Project, Mt. Angel, Project #2005-10, dated October 26, 2005*, for the period of October 28, 2005 through June 30, 2006.

(k) *Special Prevailing Wage Rate Determination for Residential Project, Penny Lane Apartments, Project #2005-11*, dated December 21, 2005, for the period of December 23, 2005 through June 30, 2006.

(l) *Special Prevailing Wage Rate Determination — Second Rate Extension — for Residential Project, Madrone Street Affordable Housing, Project #2004-01*, dated April 22, 2004. Rate extension dated December 21, 2005, for the period of January 1, 2006 through June 30, 2006.

(2) Copies of the rates referenced in section (1) of this rule are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and listed in the blue pages of the phone book. Copies may also be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 279C.815
Stats. Implemented: ORS 279C.815
Hist.: BLI 5-1999, f. 6-30-99, cert. ef. 7-1-99; BLI 7-1999, f. 8-26-99, cert. ef. 9-15-99; BLI 8-1999, f. & cert. ef. 9-8-99; BLI 10-1999, f. 9-14-99, cert. ef. 9-17-99; BLI 11-1999, f. 9-22-99, cert. ef. 9-27-99; BLI 6-2000, f. 2-14-00, cert. ef. 2-15-00; BLI 12-2000, f. 5-24-00, cert. ef. 7-1-00; BLI 18-2000, f. & cert. ef. 9-1-00; BLI 21-2000, f. 9-15-00, cert. ef. 9-22-00; BLI 23-2000, f. & cert. ef. 9-25-00; BLI 24-2000, f. 10-30-00, cert. ef. 11-1-00; BLI 2-2001, f. & cert. ef. 1-24-01; BLI 6-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 7-2001, f. 7-20-01, cert. ef. 7-24-01; BLI 9-2001, f. 7-31-01, cert. ef. 8-1-01; BLI 10-2001, f. 8-14-01, cert. ef. 8-15-01; BLI 11-2001, f. & cert. ef. 8-22-01; BLI 13-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 6-2002, f. 3-14-02, cert. ef. 3-15-02; BLI 7-2002, f. 3-22-02, cert. ef. 3-25-02; BLI 11-2002, f. & cert. ef. 5-23-02; BLI 13-2002, f. 6-26-02 cert. ef. 7-1-02; BLI 14-2002, f. 8-23-02, cert. ef. 10-1-02; BLI 2-2003, f. & cert. ef. 3-28-03; BLI 2-2004, f. 4-23-04, cert. ef. 5-1-04; BLI 3-2004, f. 5-18-04, cert. ef. 5-19-04; BLI 4-2004, f. & cert. ef. 5-24-04; BLI 5-2004, f. 6-23-04, cert. ef. 6-24-04; BLI 7-2004, f. 7-14-04, cert. ef. 7-15-04; BLI 13-2004, f. & cert. ef. 10-19-04; BLI 14-2004, f. 10-29-04 cert. ef. 11-1-04; BLI 16-2004, f. 11-8-04, cert. ef. 11-10-04; Renumbered from 839-016-0750, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 9-2005, f. 4-15-05, cert. ef. 4-18-05; BLI 10-2005, f. & cert. ef. 5-2-05; BLI 11-2005, f. 5-31-05, cert. ef. 6-1-05; BLI 12-2005, f. & cert. ef. 6-21-05; BLI 13-2005, f. 6-30-05, cert. ef. 7-1-05; BLI 14-2005, f. & cert. ef. 7-22-05; BLI 15-2005, f. 8-9-05, cert. ef. 8-10-05; BLI 17-2005, f. 8-26-05, cert. ef. 8-29-05; BLI 23-2005, f. 10-26-05, cert. ef. 10-28-05; BLI 25-2005, f. 12-22-05, cert. ef. 12-23-05

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Adm. Order No.: BLI 26-2005
Filed with Sec. of State: 12-23-2005
Certified to be Effective: 1-1-06
Notice Publication Date:
Rules Amended: 839-025-0700
Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2006.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0700
Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR* and *federal Davis-Bacon Act* dated January 1, 2006, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2006, and the effective dates of the applicable special wage determination and rates amendment: Marine Rates for Public Works Contracts in Oregon (effective September 20, 2005).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2006, and the determination referenced in subsection (1) are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 279C.815
Stats. Implemented: ORS.279C.815
Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99: BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06

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Adm. Order No.: BLI 27-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 839-001-0420, 839-001-0470
Subject: The amended rules implement and conform existing rules to the provisions of HB 3319 (2005), which modifies provisions relating to the payment of wages and employer penalty liability under certain circumstances if an employee quits employment without giving the employer 48 hours' notice.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-001-0420
Payment of Wages at Termination of Employment

(1) Except as provided in OAR 839-001-0440 and 839-001-0490, when an employer unilaterally discharges an employee or when the employee and the employer mutually agree to the termination of employment, all of the wages that have been earned but not paid, become due and payable not later than the end of the first business day after the discharge or termination. Except as provided in subsections (3) and (5) of this rule, when the employment terminates because of discharge or mutual agreement on a Saturday, Sunday or holiday, all wages earned and unpaid must be paid by not later than the end of the first business day after the employment termination.

(2) When the employee gives the employer notice of 48 hours or more (not including Saturday, Sunday and holidays) that the employee intends to quit employment, all wages that have been earned but not paid become due and payable on the last day of the employee's employment.

(3)(a) Except as provided in subsections (b) and (c), when the employee fails to give the employer notice as provided in subsection (2) of this rule, all wages that have been earned but not paid, become due and payable within five days, excluding Saturdays, Sundays and holidays, of the date the employee quit or at the next regularly scheduled payday, whichever occurs first.

(b) If an employee has not given to the employer the notice described in subsection (2) of this rule, and if the employee is regularly required to submit time records to the employer to enable the employer to determine the wages due the employee, within five days after the employee has quit, the employer shall pay the employee the wages the employer estimates are due and payable.

(c) In the event an employee whose final payment of wages are subject to the provisions of subsection (b) submits required time records after the last day of the employee's employment, then any additional wages due to the employee and not paid pursuant to subsection (b) must be paid within five days after the employee submits the required time records.

(4) When an employee employed pursuant to an unexpired contract which provides for a definite period of work, quits with or without notice, all wages earned but not paid become due and payable at the next regularly scheduled payday.

(5) When the employment terminates because of discharge, mutual agreement or the employee quits (with or without notice) and the employer is the Oregon State Fair and Exposition Center, a county fair or show, the County Fair Commission or other employer engaged in activities authorized by ORS 565.010 to 565.990, all wages earned and unpaid must be paid not later than the end of the second business day after the employment termination. This subsection does not apply to contractors, exhibitors or others which are not agencies, boards or commissions established in ORS 565.010 to 565.990.

(6) The provisions of this rule do not apply when the employee's employment with the employer is covered by a collective bargaining agree-

ment, the terms of which provide for the payment of wages at termination of employment. However, if the collective bargaining agreement does not contain provisions for the payment of wages at termination of employment, the provisions of this rule are applicable.

Stat. Auth.: ORS 652.165
Stats. Implemented: ORS 652.140
Hist.: BL 9-1996, f. & cert. ef. 10-8-96; BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04; BLI 27-2005, f. 12-29-05, cert. ef. 1-1-06

839-001-0470
Penalty for Failure to Pay Wages on Termination of Employment

(1) When an employer willfully fails to pay all or part of the wages due and payable to the employee upon termination of employment within the time specified in OAR 839-001-0420, 839-001-0430 and 839-001-0440, the employer will be subject to the following penalty:

(a) The wages of the employee will continue to accrue from the date the wages were due and payable until the date the wages are paid or until a legal action is commenced, whichever occurs first;

(b) The employee's wages will continue to accrue at the employee's hourly rate of pay times eight (8) hours for each day the wages are unpaid;

(c) The maximum penalty will be no greater than the employee's hourly rate of pay times 8 hours per day times 30 days.

(d) Except as provided in subsection (e), the wages of an employee that are computed at a rate other than an hourly rate (e.g. salaries) will be reduced to an hourly rate for penalty computation purposes by dividing the total wages earned during the wage claim period (the period for which wages are owed and upon which the wage claim is based) by the total number of hours worked during the wage claim period.

(e) Notwithstanding subsection (d), when wages are earned based on commission, bonus, piece rate, or other methods not based on hours worked, the wages will be reduced to an hourly rate for penalty computation purposes by dividing the total wages earned in the last 30 calendar days of employment by the total number of hours worked in the last 30 calendar days of employment. If the employee was employed for less than 30 days, the total wages earned during the entire period of employment will be divided by the number of hours worked during the entire period of employment.

(2) If the employer pays the full amount of unpaid wages within 12 calendar days after the written notice of such unpaid wages is sent by the employee or a person on behalf of the employee, the penalty may not exceed 100 percent of the employee's unpaid wages.

(a) If the employee or person on behalf of the employee fails to send the written notice of unpaid wages to the employer, the penalty may not exceed 100 percent of the employee's unpaid wages.

(b) Subsection (2) does not apply when the employer has violated ORS 652.140, 652.145 one or more times in the year before the employee's employment ceased or the employer terminated one or more other employees on the same date that the employee's employment ceased.

(c) For purposes of determining when an employer has paid wages or compensation under this subsection, payment occurs on the date the employer delivers the payment to the employee or sends the payment by first class mail, express mail or courier service to the employee's last-known address.

(3) Additional actual wages owed to an employee in any pay period for which the employer has timely paid the employee any estimated wages due and payable in compliance with OAR 839-001-0420(3)(b) are not considered unpaid wages subject to the penalty provisions of section (1) of this rule unless the employer fails to pay the employee the additional actual wages owed for such pay period within the time required under OAR 839-001-0420(3)(c).

(4) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $1000 against any person who violates ORS 652.140 and 652.145 or any rule adopted pursuant thereto.

(5) When an employer shows that it was financially unable to pay the wages at the time the wages accrued, the employer will not be subject to the penalty provided for in OAR 839-001-0470. If an employer continues to operate a business or chooses to pay certain debts and obligations in preference to an employee's wages, there is no financial inability.

Stat. Auth.: ORS 652.165
Stats. Implemented: ORS 652.150
Hist.: BL 9-1996, f. & cert. ef. 10-8-96; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04; BLI 27-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: BLI 28-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 839-015-0155, 839-015-0157, 839-015-0160, 839-015-0165, 839-015-0200, 839-015-0230, 839-015-0260, 839-015-0300, 839-015-0350, 839-015-0500, 839-015-0508, 839-015-0600, 839-015-0610
Subject: The amended rules implement and conform existing rules to the provisions of SB 135 (2005), which requires farm labor contractors to provide a certified true copy of all payroll records for work done as a farm labor contractor when the contractor pays employees directly. In addition, the address of the bureau's Farm Labor Unit has been changed in other rules in this division, reflecting the current location of the license unit in BOLI's Salem office.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-015-0155
Procedure for Obtaining a License

Application for a license may be made as follows:

(1) File a completed application on forms supplied by the Bureau. In the case of a partnership, each partner must complete and file a separate application form.

(2) A farm or forest labor contractor may apply for a license on behalf of an employee, providing that all of the requirements of OAR 839-015-0141 are met.

(3) Pay the appropriate fees at the time the application is filed. Where the applicant is engaged in the production or harvesting of farm products, a $100 fee is required. Where the applicant is engaged in the forestation or reforestation of lands (or engaged in both the forestation and reforestation of lands and the production or harvesting of farm products), a $250 fee is required. In the case of a partnership, each partner must pay the appropriate fee.

(4) File with the application proof of financial ability to pay wages and advances in the amount required by OAR 839-015-0210 on forms supplied by the bureau. Except as provided in OAR 839-015-0157, in the case of a partnership, each partner must file such proof. Such proof may be a corporate surety bond, a cash deposit or a deposit the equivalent of cash.

(5) File any assumed business name and corporate name with the Office of the Secretary of State and submit proof of such filing with the application.

(6) If a corporation, show proof of being authorized to do business in Oregon.

(7) All forms, documents and other required information shall be filed with Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 651.060(4), 658.407(3), 658.415(14) & 658.820
Stats. Implemented: ORS 658.405 - 658.830
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-1999, f. 9-28-99, cert. ef. 10-23-99; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0157
Procedure for Obtaining Reduction in the Amount of Required Aggregate Bonding When More than One Individual is Required to Be Licensed in One Entity

(1) Farm or forest labor contractors desiring to apply for a reduction in the required bond or deposit may do so by submitting an application to the Bureau of Labor and Industries.

(2) Applications shall be in writing and on forms provided by the bureau. All completed applications must be mailed or delivered to the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(3) No such application shall be considered unless the commissioner determines that:

(a) The application pertains to a single business entity; and

(b) More than one natural person is an owner or employee of the business entity; and

(c) Such persons engage in activities requiring a farm labor contractor's license; and

(d) Such persons engage in such activities solely for the business entity.

(4) In the case of a corporate surety bond, applications must be accompanied by a statement from the licensee's bonding agent or agents certifying the length of time the licensee has been bonded by the agent and that there have been no valid claims against the licensee's bond during that time. If the license utilized more than one bonding agent, a statement is required from each agent.

(5) No application may be granted unless the business entity has operated for at least one year without a valid claim in this or any other state against the bond or deposit.

(6) When the commissioner is satisfied that the business entity has presented adequate proof that it has operated for at least one year without a

valid claim against its bond or deposit, and when the commissioner determines that the conditions set out in sections (3) and (5) of this rule are met, the commissioner may grant an application for a reduction in the aggregate amount of the required bond or deposit.

(7) In determining whether to grant the application, the commissioner shall consider the following circumstances:

(a) All matters contained in the application;

(b) The number of licensees;

(c) The type of business entity;

(d) The history of each licensee in complying with any law;

(e) Whether the licensees are dealing directly or indirectly with employees;

(f) The number of employees employed by the business entity;

(g) The character, competence or reliability of the licensees, as those terms are used in these rules;

(h) Other information bearing on the circumstances of the application.

(8) When the commissioner determines to grant an application for lower aggregate bonding requirements for a business entity and its owners pursuant to sections (5) and (6) of this rule, the application will be granted to permit a total aggregate bond or deposit in the amount required by OAR 839-015-0210 for one licensee with a corresponding number of employees:

(9) When the commissioner grants an application for lower aggregate bonding requirements for a business entity and its owners, the required amount of aggregate bond or deposit may be divided among the licensees as they may agree, so long as each is obligated; in the absence of an agreement, the required amount shall be divided equally among them.

(10) Notwithstanding section (8) of this rule, when the commissioner determines to grant an application for lower aggregate bonding requirements for a business entity and its owners pursuant to section (6) of this rule, the entity must post an aggregate bond or deposit in the minimum amount specified in ORS 658.415 or 658.735, whichever is greater.

(11) The commissioner may specify conditions, if any, on the approval of the application.

(12) If the commissioner rejects the application, the reasons for the rejection will be specified.

(13) The commissioner may, for good cause shown, revoke the licensee's authorization to post a reduced bond or deposit. "Good cause" includes but is not limited to the following situations:

(a) A valid claim is filed against the bond or deposit of the business entity or licensee who is an owner or employee;

(b) The business entity ceases operating the business for which the bond or deposit was accepted;

(c) Failure to pay wages to the employees when due;

(d) Failure to pay advances made to or on behalf of the licensee by growers or producers of agricultural products or by owners or lessees of land intended to be used for the production of timber;

(e) The business entity, its licensees, its agents or employees during the course of their employment, cause damage to any person by reason of willful misrepresentation, fraud, deceit or other unlawful act or omission;

(f) The business entity, including any licensee, agent or employee, acting in the course of employment, has engaged in forest or farm labor contracting activities on behalf of anyone other than the business entity.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0160
Procedure for Obtaining a Duplicate License

In the event a license is lost or stolen, the licensee shall submit a written request for a duplicate license. The licensee shall state the reasons for the request and the circumstances of the loss or theft. The new license will indicate the word "DUPLICATE" on the license above the number. The written request shall be made to the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0165
Procedure for Issuing or Renewing License

(1) Each license shall be issued on the date all application requirements are met. Except as provided in section (2) of this rule, licenses are valid for one year.

(2) The expiration date of the license will be one year later, on the last day of the month in which the license was issued.

(3) Applications for renewal shall be made 30 days prior to the expiration date by filing a renewal application, paying the appropriate fees, and filing proof of financial ability to pay wages and certain advances.

(4) Each renewal application shall be accompanied by the work agreement between the contractor and the workers which is required by OAR 839-015-0360. The completed renewal application, renewal fee, and other information required in section (2) of this rule must be post-marked or received by the Licensing Unit at least 30 days prior to the expiration date of the license.

(5) Applications, fees and other forms and documents must be filed with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0200
Proof Required/Forms to Be Used

(1) Every applicant for a farm or forest labor contractor's license must, unless otherwise exempt, show proof of financial ability to promptly pay the wages of employees and any advances made to or on behalf of the contractor by farmers or owners or lessees of land intended to be used for the production of timber. Such proof must accompany the applicant's application and be on forms supplied by the bureau.

(2) The proof of financial ability to promptly pay the wages and advances referred to in section (1) of this rule shall be a properly executed corporate surety bond as evidenced by the completion of Form WH-157 or a deposit in cash or negotiable securities acceptable to the commissioner.

(3) The forms are available upon request from: Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0230
Procedure for Obtaining Reduction in the Amount of Bond or Deposit Required

(1) In addition to the application for aggregate bond reduction provided in OAR 839-015-0157, farm and forest labor contractors who have been licensed for at least two consecutive years may apply for a reduction in the bond or deposit required by ORS 658.415(3). Applications shall be in writing and on forms provided by the bureau. All completed applications should be mailed or delivered to the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(2) Farm and forest labor contractors may apply for a reduction in the bond or deposit required at any time after the contractor has been licensed for no less than two consecutive years or at the time a farm or forest labor contractor license renewal application is made, pursuant to ORS 658.435(2).

(3) The contractor must have prior approval from the Bureau of Labor and Industries before submitting a reduced bond or deposit.

(4) No application for a reduction in the bond or deposit will be considered by the commissioner in the case of a farm or forest labor contractor license renewal application unless such completed application is received with a completed license renewal application at least 30 days prior to the expiration of the license.

(5) Applicants for a reduction in the bond or deposit will be notified in writing of the commissioner's disposition of the application by the License Unit of the bureau within 15 days of receipt of a completed application for a reduction.

(6) If application for a reduction in the bond or deposit is made less than 30 days prior to the expiration date of the farm labor contractor's license, the contractor must submit the bond or deposit required pursuant to ORS 658.415(3) without reduction along with the contractor's completed application for a bond or deposit reduction.

(7) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has submitted an unreduced bond, an amended bond for the reduced amount approved will be accepted by the commissioner after approval of the reduced bond.

(8) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has submitted an unreduced cash deposit, the commissioner will initiate a refund of the appropriate amount to the contractor within five working days after approval of the reduced deposit.

(9) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has submitted an instrument the

equivalent of cash, the contractor will be allowed to replace such instrument with an instrument in the approved lesser amount.

(10) No application for reduction in the required bond or deposit shall be approved unless the commissioner determines that:

(a) The applicant has operated as an Oregon licensed farm labor contractor without an employee indorsement for at least two years in compliance with ORS 658.405 to 658.503 and with any other laws pertaining to the conduct of farm labor contractors; and

(b) The applicant employs 21 or more employees; and

(c) No valid claims for unpaid wages have been made against the applicant during the qualifying period of time for a bond or deposit reduction.

(11) If the commissioner rejects the application, every reason for the rejection will be specified.

(12) The commissioner may, for good cause shown, revoke the licensee's authorization to post a reduced bond or deposit. "Good cause" includes, but is not limited to, the following situations:

(a) A valid claim is filed against the bond or deposit of the licensee;

(b) Failure to pay wages to employees when due;

(c) Failure to pay advances made to or on behalf of the licensee by growers or producers of agricultural products or by owners of lessees of land intended to be used for the production of timber;

(d) The licensee or its agents cause damage to any person by reason of willful misrepresentation, fraud, deceit or other unlawful act or omission;

(e) The licensee or its agents engage in farm or forest labor contracting activities on behalf of anyone other than the business entity.

(f) Actions of the licensee demonstrate the licensee's character, reliability or competence make the licensee unfit to act as a contractor pursuant to OAR 839-015-0520(3).

(13) If the commissioner determines that the criteria in section (2) have been met by the applicant, the commissioner may reduce the amount of the bond or deposit that would otherwise be required pursuant to ORS 658.415(3) to an amount determined by the commissioner, but not less than the following:

(a) If the commissioner finds that the contractor has so operated for a period of at least five years, $20,000; or

(b) If the commissioner finds that the contractor has so operated for a period of at least four years, $22,500; or

(c) If the commissioner finds that the contractor has so operated for at least three years, $25,000; or

(d) If the commissioner finds that the contractor has so operated for at least two years, $27,500.

(14) If the applicant provided one or more corporate surety bonds as proof of financial responsibility during any of the qualifying period of time for which application for reduction is being made, the applicant must submit with the application a statement from the licensee's bonding agent or agents certifying the length of time the licensee has been bonded by the agent and that there have been no valid claims filed against the licensee's bond(s) during the qualifying period of time covered by the application. If the licensee utilized more than one bonding agent, a statement is required from each agent for the period of time covered by the application.

Stat. Auth.: OL Ch. 73, Sec. 4, 1995
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0260
Procedure for Filing Protest

(1) Any individual desiring to protest the issuance of a farm and forest labor contractor license must file the protest in writing with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(2) The written protest must contain the following information:

(a) Name, address and phone number of the individual filing the protest;

(b) Date of the protest;

(c) Name of licensee or license applicant against whom the protest is being made;

(d) A complete statement of the facts, circumstances and other reasons for the protest. The statement should include alleged violations, approximate dates of alleged violations, names of witnesses, if any, and any documents which support the allegations;

(e) The signature of the individual making the protest.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0300
"Wage Certification" Form

(1) Every farm and forest labor contractor must, unless otherwise exempt, submit a certified true copy of all payroll records to the Wage and Hour Division when the contractor or the contractor's agent pays employees directly as follows:

(a) The first report is due no later than 35 days from the time the contractor begins work on each contract and must include whatever payrolls the contractor has paid out at the time of the report;

(b) The second report is due no later than 35 days following the end of the first 35 day period on each contract and must include whatever payrolls have been issued as of the time of the report;

(c) If the contract lasts more than 70 days, succeeding wage certification reports must include whatever payrolls the contractor has paid out at the time of the report, with the reports due at successive 35 day intervals, e.g. 105 days, 140 days from the time the contractor begins work on the contract.

(2) The certified true copy of payroll records may be submitted on Form WH-141. This form is available to any interested person. Any person may copy this form or use a similar form provided such form contains all the elements of Form WH-141.

(3) The wages paid to the officers of the corporation may be omitted from the Form WH-141 or the other records submitted under this rule.

(4) The certified true copy of payroll records shall be submitted to: Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(5) Contractors who have recruited, solicited or supplied workers from the state of Oregon who are employed on farm or forestation/reforestation contracts located outside the State of Oregon must comply with the provisions of this rule.

Stat. Auth.: ORS 658.417(3)
Stats. Implemented: ORS 658.417(3)
Hist.: BL 7-1983(Temp), f. & ef. 8-5-83; BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0350
Work Agreements Between Farm Labor Contractor and Farmers

(1) Farm Labor Contractors are required to file information relating to their agreements with farmers with the Bureau.

(2) The Commissioner has developed Form WH-152 that may be used to comply with this rule. Farm Labor Contractors may use any form for filing the information so long as it contains all the elements of Form WH-152.

(3) Farm Labor Contractors must file this information with the Bureau by April 30 of each year. Amended or updated information may be filed at any time. All information must be filed with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658.407(3) & 962
Stats. Implemented: ORS 658.440(1)(e)
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BLI 7-2000, f. & cert. ef. 2-23-00; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0500
Action Against the Bond or Deposit

(1) Any person not paid wages owed to him/her by a farm or forest labor contractor or any farmer or owner or lessee of land intended to be used for the production of timber not paid advances due them by the farm or forest labor contractor has a right of action against the surety on the bond or deposit with the commissioner. The individual may exercise this right or may assign this right to another.

(2) The action on the bond or on the deposit held by the commissioner may not be joined in a suit or action on the bond or against the commissioner brought for any other claim.

(3) Any person seeking to recover on the bond or from the deposit with the commissioner must first establish the licensee's liability. The liability may be established in any of the following ways:

(a) A judgment of the court;

(b) A final administrative order issued pursuant to statute or rule;

(c) The acknowledgment of the contractor of such liability;

(d) Other satisfactory evidence of liability as may be shown which establishes the liability.

(4) Claims against the bond or deposit will not be paid unless, within six months of the end of the period during which the bond or deposit applies, the claimant or claimant's assignee gives notice of the claim by certified mail to the surety or the commissioner. Notice of claim shall be sufficient if it states that a wage claim is being made by the worker against the contractor, and it is not a defense to payment on the bond or deposit that the amount of the wage claim is not specified in the notice, or that the ultimate amount of wages found to be due is greater than the amount specified in the

notice.

(5) Any claim or notice of claim filed pursuant to a claimant's right of action must be filed as follows:

(a) If the filing is against a surety bond, the claim or notice must be filed with the surety. The name and address of the surety may be obtained from the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305;

(b) If the filing is against a deposit held by the commissioner, the claim or notice must be filed with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

(6) Except as provided in section (8) of this rule, the commissioner and the surety shall make payments on the bond or deposit in the following priority:

(a) Payments on wage claims;

(b) Payments on advances made to or on behalf of the contractor by a farmer or an owner or lessee of land intended to be used for the production of timber;

(c) If there are insufficient funds to pay all wage claims in full, such claims will be paid in part;

(d) If there are insufficient funds to pay advances in full after all wage claims are paid, such advances will be paid in part.

(7) Except as provided in section (8) of this rule, in order to insure that all wage claims will be accorded priority treatment as required by ORS 658.415(9)(a), the commissioner may delay any payments for advances claimed, until the expiration of the time within which wage claims may be submitted. The commissioner may make conditional payment based upon adequate security that subsequent wage claims will be paid.

(8) Any person who suffers any loss of wages from the employer of the person or any other loss due to activities of an agricultural association or private nonprofit corporation as a farm labor contractor shall have a right of action against the surety upon the bond or against the deposit with the commissioner. The right of action is assignable and may not be included in any action against the agricultural association or private nonprofit corporation but shall be exercised independently after first procuring adequate proof of liability as provided in section (3) of this rule.

(9) A member of any agricultural association that is required to be licensed under ORS 658.410 shall be jointly and severally liable for any damages, attorney fees, or costs awarded to any person for actions taken by the association in its capacity as a farm labor contractor if such actions were required, authorized, approved or ratified by the member.

(10) The surety company or the commissioner shall make prompt and periodic payments on the agricultural association's or private nonprofit corporation's liability up to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(A) Payment based upon priority of wage claims over other liabilities;

(B) Payment in full of all sums due to each person who presents adequate proof of the claim; and

(C) If there are insufficient funds to pay in full the person next entitled to payment in full, payment in part to the person.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 7-2000, f. & cert. ef. 2-23-00; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0508
Violations for Which a Civil Penalty May Be Imposed

(1) Pursuant to ORS 658.453, the commissioner may impose a civil penalty for violations of any of the following statutes:

(a) Recruiting, soliciting, supplying or employing workers without a license to act as a farm or forest labor contractor in violation of ORS 658.410;

(b) Failure of the farm or forest labor contractor to, before beginning work on any contract or other agreement:

(A) Display the license or temporary permit to the person to whom workers are to be provided, or to the person's agent; or

(B) Provide to the person to whom workers are to be provided, or to the person's agent, a copy of the license or temporary permit pursuant to ORS 658.437(1).

(c) Failing to post a notice in English and in any other language used to communicate with workers that the contractor has a bond or deposit and where claims can be made against the bond or deposit in violation of ORS 658.415(15);

(d) Failing to file a change of address notice with the U.S. Post Office and the bureau in violation of ORS 658.440(1)(b);

(e) Failing to pay or distribute when due any money or other valuables entrusted to the contractor in violation of ORS 658.440(1)(c);

(f) Failing to comply with contracts or agreements entered into as a contractor in violation of ORS 658.440(1)(d);

(g) Failing to furnish each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement that contains the terms and conditions described in ORS 658.440(1)(f);

(h) Failing to execute a written agreement between the worker and the farm labor contractor containing the terms and conditions described in ORS 658.440(1)(f), at the time of hiring and prior to the worker performing any work for the farm labor contractor;

(i) Failing to furnish each worker with an itemized deduction statement and statement as to the rate of wage to be paid and other information in violation of ORS 658.440(1)(h);

(j) Making misrepresentations, false statements or willful concealments on the license applications in violation of ORS 658.440(3)(a);

(k) Willfully making or causing to be made any false, fraudulent or misleading information concerning the terms, conditions or existence of employment in violation of ORS 658.440(3)(b);

(l) Soliciting or inducing or causing to be solicited or induced a violation of an existing employment contract in violation of ORS 658.440(3)(c);

(m) Knowingly employing an alien not legally employable or present in the United States in violation of ORS 658.440(3)(d);

(n) Assisting an unlicensed person to act as a contractor in violation of ORS 658.440(3)(e);

(o) Inducing in any manner whatsoever an employee or subcontractor to give up any part of the employee's or subcontractor's compensation to which they are entitled under an employment contract or under federal or state wage laws in violation ORS 658.440(3)(f);

(p) Soliciting, inducing, or causing to be solicited or induced, the travel of a worker from one place to another by representing to a worker that employment for the worker is available at the destination when employment for the worker is not available within 30 days after the date work was represented as being available, is in violation of ORS 658.440(3)(g);

(q) Discharging or in any other manner discriminating against employees in violation of ORS 658.452;

(r) Failing to provide lodging and food when required by ORS 658.440(2)(c) and these rules;

(s) Failing to carry the license in violation of ORS 658.440(1)(a);

(t) Failing to exhibit the license in violation of ORS 658.440(1)(a);

(u) Failing to provide certified true copies of payroll records in violation of ORS 658.440(1)(i).

(2) In the case of forest labor contractors, in addition to any other penalties, a civil penalty may be imposed for each of the following violations:

(a) Failing to obtain a special indorsement from the bureau to act as a forest labor contractor in violation of ORS 658.417(1);

(b) Failing to provide workers' compensation insurance in violation of ORS 658.417(4).

(3) The commissioner may impose a civil penalty on a person to whom workers are to be provided, or on the person's agent, when the person uses an unlicensed farm or forest labor contractor without first:

(a) Examining the license or temporary permit of the farm or forest labor contractor; and

(b) Retaining a copy of the license or temporary permit provided to the person by the farm or forest labor contractor, pursuant to ORS 658.453(1)(f).

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0600
Procedure for Filing Civil Action under ORS 658.453(4)

(1) Any worker who wishes to file a civil action pursuant to ORS 658.453(4) must file a complaint with the commissioner.

(2) The complaint shall be in writing, and shall contain the name or names of the persons or entities against whom the complaint is being filed. A copy of the proposed complaint to be filed with the court should, if available, be attached to the complaint filed with the commissioner. The worker filing the complaint with the commissioner should also state whether the worker intends to pursue a private civil court action.

(3) The complaint shall be considered filed with the commissioner on the date that it is mailed to the following address: Bureau of Labor and Industries; Wage and Hour Division, 800 NE Oregon Street #1045, Portland, OR 97232.

(4) The complaint that is filed with the commissioner should be filed prior to the filing in court of a civil complaint pursuant to ORS 658.453(4). However, if the complaint filed with the commissioner is not filed prior to the filing of a complaint in court but is done so before the entry of a final

judgment, it shall be considered to be filed timely for purposes of ORS 658.453(4).

Stat. Auth.: ORS 651 & 658
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

839-015-0610
Actions Under ORS 658.475 for Injunctive or Declaratory Relief and Damages

(1) Any person who wishes to file a civil action pursuant to ORS 658.475 is not required to file a complaint with the commissioner. However, if a person filing such action desires to notify the commissioner, he/she may do so by sending a copy of the complaint that the person filed with the court to: Bureau of Labor & Industries, Wage and Hour Division, 800 NE Oregon Street #1045, Portland, OR 97232.

(2) The damages provided for in ORS 658.475 are in addition to damages provided for in any other statute including, but not limited to, ORS 658.453(4).

(3) The commissioner or any other person, including workers, may bring a civil action under ORS 658.475.

Stat. Auth.: ORS 651 & 658
Stats. Implemented: ORS 658.405 - 658.503
Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BLI 28-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: BLI 29-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05, 12-1-05
Rules Adopted: 839-025-0015
Rules Amended: 839-025-0003, 839-025-0004, 839-025-0010, 839-025-0020, 839-025-0035, 839-025-0100, 839-025-0220, 839-025-0230, 839-025-0530
Rules Repealed: 839-025-0240
Subject: The amended rules implement and conform existing rules to the provisions of SB 136 and SB 477 (2005) which amended the Prevailing Wage Rate ("PWR") law as follows: Removes an obsolete reference to coverage of workers employed as flaggers under the federal Davis-Bacon Act; requires contractors and subcontractors to file with the Construction Contractors Board a public works bond before starting work on a contract or subcontract for a public works project subject to the provisions of the Prevailing Wage Rate Law; requires general contractors to include notice in subcontracts when a project is subject to the PWR law; requires contracting agencies and general contractors to withhold 25% of amounts owed to contractors if certified payrolls are not submitted; increases the PWR law threshold from $25,000 to $50,000; excludes the value of donated materials or work performed on a project by individuals volunteering to a public agency as part of the price of a PWR project, but includes the value of work performed by persons paid by a contractor as part of the price of a project; establishes that funds of a public agency do not include building and development fees waived or paid by the public agency, staff resources used for project oversight or coordination, or staff resources used for the design or inspection of the project; requires payment of the higher of state or federal rates on projects subject to both the state PWR law and federal Davis-Bacon Act; requires public agencies to include in project specifications information showing which prevailing rate of wage is higher; requires BOLI to compare state and federal prevailing wage rates, determine which is higher for workers in each trade in each locality, and make this information available twice each year; and require subcontracts subject to the PWR law to contain a provision indicating that workers must be paid no less than the applicable prevailing wage rate. In addition, non-substantive "housekeeping" revisions have been made (primarily statute and rule reference corrections).
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0003
Forms

(1) All forms referenced in these rules may be obtained on the bureau's website, www.oregon.gov/boli or at the address listed below.

(2) Completed forms, requests and fees referenced in these rules may be filed with the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St. #1045, Portland, OR 97232.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0003, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06

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 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 one and one-half.

(14) "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) "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.

(24) "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.

(25) "Trade" or "occupation" is defined in accordance with the prevailing practices of the construction industry in Oregon.

(26) "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.

(27) "Wage determination" includes the original decision and any subsequent amendments made by the commissioner in accordance with ORS 279C.815.

(28) "Wages" or "Prevailing Wages" means the basic hourly rate of pay and fringe benefits as defined in sections (2) and (8) of this rule.

(29) "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.)

Stat. Auth.: ORS 279 & 651.060
Stats. Implemented: ORS 279.334
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

839-025-0010
Payroll and Certified Statement

(1) The form required by ORS 279C.845 is the Payroll and Certified Statement form, **WH-38**. This form must accurately and completely set out the contractor's or subcontractor's payroll for each week during which the contractor or subcontractor employs a worker upon a public works project.

(2) The contractor or subcontractor may submit the weekly payroll on the **WH-38** form or may use a similar form providing such form contains all the elements of the **WH-38** form. When submitting the weekly payroll on a form other than **WH-38**, the contractor or subcontractor must attach the certified statement contained on the WH-38 form to the payroll forms submitted.

(3) Each Payroll and Certified Statement form must be submitted by the contractor or subcontractor to the public contracting agency by the fifth business day of each month following a month in which workers were employed upon a public works project.

(4) The Payroll and Certified Statement forms received by the public contracting agency are public records subject to the provisions of ORS 192.410 to 192.505. As such, they must be made available upon request. Pursuant to ORS 279C.845(2), information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 through 279C.870.

(5) If the contractor fails to submit its payroll and certified statement forms to the public contracting agency as required by subsection (3) above, the public contracting agency must retain 25 percent of any amount earned by the contractor until the contractor has submitted the required payroll and certified statements to the public contracting agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the contractor at the time each payroll and certified statement are due. For example, if the contractor fails to submit its payroll and certified statement by the fifth of the month and the contractor earned $100,000 in the period since its last payroll and certified statement were submitted to the public contracting agency, the public contracting agency must retain 25 percent of $100,000 ($25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the contractor.

(c) Once the required payroll and certified statement have been submitted to the public contracting agency, the public contracting agency must pay the amount retained to the contractor within 14 days.

(6) If a first-tier subcontractor fails to submit a payroll and certified statement form to the public contracting agency as required by subsection (3) above, the contractor must retain 25 percent of any amount earned by

the first-tier subcontractor until the first-tier subcontractor has submitted the required payroll and certified statements to the public contracting agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the first-tier subcontractor at the time each payroll and certified statement are due. For example, if the first-tier subcontractor fails to submit the payroll and certified statement by the fifth of the month and the first-tier subcontractor earned $100,000 in the period since the last payroll and certified statement were submitted to the public contracting agency, the contractor must retain 25 percent of $100,000 ($25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the first-tier subcontractor.

(c) The contractor must verify that the first-tier subcontractor has filed the required payroll and certified statement(s) with the public contracting agency before the contractor may pay the first-tier subcontractor any amount retained under this section.

(d) Once the first-tier subcontractor has filed the required payroll and certified statement with the public contracting agency, the contractor must pay the amount retained to the first-tier subcontractor within 14 days.

(7) Notwithstanding ORS 279C.555 or 279C.570(7), amounts retained pursuant to the provisions of this rule shall be in addition to any other amounts retained.

[ED. NOTE: Forms and Publications referenced are available from the agency.]
Stat. Auth.: ORS 279 & 651.060
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 13-1992, f. & cert. ef. 12-14-9; BL 3-1996, f. & cert. ef. -1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0010, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06

839-025-0015
Public Works Bonds

(1) The Commissioner of the Bureau of Labor and Industries adopts the language in the Statutory Public Works Bond set forth in **Appendix 5**.

(2) The name of the entity as it appears on the public works bond must be the same as the entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the bond must include the names of all partners or venturers (except limited partners);

(c) If the entity is a limited liability partnership, the bond must be issued in the name of all partners and in the name of the limited liability partnership;

(d) If the entity is a limited partnership, the bond must be issued in the name of all general partners and in the name of the limited partnership and any other business name(s) used. Limited partners do not need to be listed on the bond;

(e) If the entity is a corporation or trust, the bond must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company.

(3) If at any time an entity changes or amends its entity name, the Construction Contractors Board must be notified within 30 days of the date of the change.

(4) If an entity is a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity, and changes the entity to one of the other entity types, the new entity must supply a new bond.

(5) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

(6) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a bonded entity will be processed regardless of business names used by such entity.

[ED. NOTE: Appendix referenced are available from the agency.]
Stat. Auth.: ORS 279C & 651.060
Stats. Implemented: ORS 279C.800 - 279C.870
Hist.: BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06

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 if 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 specifications, 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 existing prevailing wage rate into the specifications by reference will not satisfy these requirements;

(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 279 & 651.060
Stats. Implemented: ORS 279.316
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

839-025-0035
Payment of Prevailing Rate of Wage

(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed.

(a) When a public works project is subject to ORS 279C.800 to 279C.870 and the Davis-Bacon Act (40 U.S.C. 276a):

(A) If the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage as required by ORS 279C.800 to 279C.870; and

(B) If the federal prevailing rate of wage is higher than the state prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the federal prevailing rate of wage as required by the Davis-Bacon Act.

(2) Every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(3) Persons employed on a public works project and who are spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.

(4) Persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the applicable prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of the public works project.

(5) Persons employed on a public works project who are employed by a commercial supplier of goods or materials must be paid no less than the applicable prevailing rate of wage when the work is performed at the "site of work" as that term is defined in OAR 839-025-0004(23) or when the work is performed in fabrication plants, batch plants, barrow pits, job headquarters, tool yards or other such places that are dedicated exclusively or nearly so to the public works project.

(6) Persons employed on a public works project by the construction contractor or construction subcontractor to transport materials or supplies to or from the public works project are required to be paid the applicable prevailing wage rate for work performed in connection with the transportation of materials or supplies at the "site of work" as that term is defined in OAR 839-025-0004(23).

(7) Persons employed on a public works project for service work as opposed to construction work are not workers required to be paid the prevailing rate of wage.

(8) Every apprentice, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at an apprentice wage rate, who is not an apprentice as defined in these rules must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

(9) Every trainee, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at a trainee wage rate, who is not a trainee as defined in these rules must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.350
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 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0035, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06

839-025-0100
Exemptions

(1) All public works are regulated under ORS 279C.800 to 279C.870 except as follows:

(a) Projects for which the total price does not exceed $50,000. As used in this section, the price of a project includes, but is not limited to, the value of work performed by every person paid by a contractor or subcontractor in any manner for the person's work on the project, but does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay.

(b) Contracts of a People's Utility District which are regulated under ORS 261.345.

(c) Projects for which no funds of a public agency are directly or indirectly used.

(A) As used in this section, "Funds of a public agency" does not include:

(i) Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction;

(ii) Building and development permit fees paid or waived by the public agency;

(iii) Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;

(iv) Staff resources of the public agency used to design or inspect one or more components of a project; or

(v) A public agency's election not to collect land rent.

(B) "Directly used public funds" means any revenue, money or that which can be valued in money derived from a public agency's immediate custody and control for the specific purpose of financing a project. Payment for all or part of a project with public property or other assets constitutes payment with public funds.

(C) "Indirectly used public funds" means that a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter. A public agency will "ultimately bear the cost" of all or part of a project in situations including, but not limited to:

(i) Amortizing the costs of construction over the life of a lease and paying these costs with public funds during the course of the lease;

(ii) A public agency subsidizing the costs of construction that would normally be borne by the contractor.

(iii) Using insurance proceeds that belong to a public agency to pay for construction. Insurance proceeds represent "money collected for the custody and control of a public agency" and therefore are public funds, whether the contractor obtains payment directly from the insurance company or the public agency; or

(iv) Using or creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the public agency.

(2) The provisions of ORS 279C.840 and these rules that regulate payment of the prevailing rate of wage do not apply to:

(a) Inmates of the Oregon Department of Corrections assigned to:

(A) A work release program or otherwise working in gainful private employment pursuant to ORS 144.480, relating to prison inmate labor; or

(B) State Parks and Recreation Department projects to improve, maintain and repair buildings and property at state parks and recreation areas pursuant to ORS 390.195(1).

(b) Oregon Youth Conservation Corps members.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 279 & 651.060
Stats. Implemented: ORS 279.357, 390.195(1) & OL Ch. 628 (2001)
Hist.: BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 15-2001, f. & cert. ef. 11-14-01; Renumbered from 839-016-0100, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06

839-025-0220
Fees for Contract Without Specific Award Amounts

(1) When the project for a public work is anticipated to equal or exceed $50,000 but the contract is awarded without stating any specific amount, the contract price for purposes of calculating the fee shall be based on the amount the public agency anticipates to be the guaranteed maximum amount of the project.

(2) When the contract is awarded without stating any specific amount, the fee shall be calculated on the guaranteed maximum amount referred to in section (1) of this rule and the fee is payable pursuant to OAR 839-025-0200.

(3) When the contract is completed, adjustments in the fees shall be

calculated and paid or a refund may be requested as provided in OAR 839-025-0210.

(4) When the agency has not determined the guaranteed maximum amount, the agency shall provide to the contractor with a good faith estimate of the contract price. The fee shall be calculated on this estimated amount.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0220, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06

839-025-0230
Special Circumstances/No General Contractors

(1) While the general contractor is normally the party that will pay the required fee, there are circumstances when this may not be the case. When the public contracting agency chooses to act as its own general contractor or when the agency contracts with another to act as the construction manager of a public works project, several parties may be responsible for paying a fee.

(2) The required fee must be paid by the contractor who is awarded the public works contract (See ORS 279C.825). Therefore, when a contracting agency acts as its own general contractor and enters into one or several contracts in connection with a public works project of $50,000 or more, each contractor shall be required to pay the fee in connection with the contract awarded to the contractor. The fee is required on all contracts, regardless of the contract price of any individual contract, so long as the combined price of all contracts awarded on the project is $50,000 or more.

(3) Section (2) of this rule is also applicable to the circumstance where the contracting agency contracts with a contractor to act as the general manager of a public works project. The contract for general manager services is a public works contract for purposes of these rules and a fee is required just as any other public works contract, since the contract would not have been entered into but for the public works project.

(4) When a contracting agency enters into an agreement for construction management services or chooses to act as its own general contractor or construction manager, the contract price for purposes of determining whether the project is regulated under the law shall be the sum of all contracts associated with the project or, if the actual sums are not known at the time work begins, the contract price shall be the guaranteed maximum amount for the project or the agency's good faith estimate of the contract price of the project if there is no guaranteed maximum amount. Under these circumstances, when the guaranteed maximum amount of the project or the agency's estimate of the price of the project meets or exceeds $50,000, each contractor that enters into a contract with the agency shall be responsible for paying a fee pursuant to OAR 839-025-0200.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0230, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06

839-025-0530
Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.

(2) Civil penalties may be assessed against any contractor, subcontractor or contracting agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.

(3) The commissioner may assess a civil penalty against a contractor or subcontractor for any of the following violations:

(a) Failure to pay the applicable prevailing rate of wage in violation of ORS 279C.840;

(b) Failure to post the applicable prevailing wage rates in violation of ORS 279C.840(4);

(c) Failure to post the notice describing the health and welfare or pension plans in violation of ORS 279C.840(5);

(d) Failure to include a provision in a subcontract that workers shall be paid not less than the specified minimum hourly rate of wage in violation of ORS 279C.830(1)(c);

(e) Failure to include in a subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt in violation of ORS 279C.830(3);

(f) Failure to file with the Construction Contractors Board a public works bond as required pursuant to Oregon Laws 2005, chapter 360, section 2, before starting work on a contract or subcontract for a public works project subject to the provisions of ORS 279C.800 to 279C.870;

(g) Failure to verify that a subcontractor has filed a public works bond as required or has elected not to file a public works bond pursuant to the provisions of Oregon Laws 2005, chapter 360, section 2, prior to permitting a subcontractor to start work on a public works project.

(h) Failure to file certified statements in violation of ORS 279C.845;

(i) Filing inaccurate or incomplete certified statements in violation of ORS 279C.845;

(j) Failure to retain 25 percent of the amount the first-tier subcontractor earned when the first-tier subcontractor fails to submit payroll and certified statement forms to the public contracting agency in violation of ORS 279C.845;

(k) Paying the prevailing rate of wage in violation of ORS 279C.840(6);

(l) Reducing an employee's pay in violation of ORS 279C.840(7);

(m) Taking action to circumvent the payment of the prevailing wage, other than subsections (i) and (k) of this section, in violation of ORS 279C.840(7);

(n) Failure to submit reports and returns in violation of ORS 279C.815(3);

(o) Failure to certify the accuracy of reports and returns in violation of ORS 279C.815(3);

(p) Failure to timely pay the fee required by ORS 279C.825;

(q) Receiving a public works contract or subcontract while on the List of Ineligibles in violation of ORS 279C.860.

(4) The commissioner may assess a civil penalty against a public contracting agency for any of the following violations:

(a) Failure to include a contract provision stating that workers must be paid the applicable prevailing rate of wage in violation of ORS 279C.830(1)(c);

(b) Failure to include a contract provision stating that a fee is to be paid to the commissioner in violation of ORS 279C.830(2);

(c) Failure to include in the contract specifications a provision stating the applicable existing prevailing wage rate in violation of ORS 279C.830(1);

(d) Failure to include in the contract specifications a provision stating that a fee is required to be paid to the commissioner in violation of ORS 279C.830(2);

(e) Failure to include in the specifications for a contract for a public works a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt in violation of ORS 279C.830(3);

(f) Failure to include in a contract for a public works a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt in violation of ORS 279C.830(3)(a);

(g) Failure to include in a contract for a public works a provision requiring the contractor to include in every subcontract a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt in violation of ORS 279C.830(3)(b);

(h) Failure to notify the commissioner when a contract is awarded in violation of ORS 279C.835;

(i) Dividing a public works project in violation of ORS 279C.810(2);

(j) Failure to include a copy of the disclosure of first-tier subcontractors with the Notice of Award in violation of ORS 279C.835;

(k) Failure to retain 25 percent of the amount the contractor earned when the contractor fails to submit payroll and certified statement forms to the public contracting agency in violation of ORS 279C.845.

Stat. Auth.: ORS 279 & 651.060
Stats. Implemented: ORS 279.370
Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0530, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: BLI 30-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 839-014-0060, 839-014-0100, 839-014-0105, 839-014-0200, 839-014-0380, 839-014-0630
Subject: The amended rules implement and conform existing rules to the provisions of SB 131 (2005), which modify and update a farm activity tax return reference in connection with an existing exemption from farmworker camp operator licensing provisions for certain eligible persons. In addition, the address of the bureau's Farm Labor

Unit has been changed in other rules in this division, reflecting the current location of the license unit in BOLI's Salem office.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-014-0060
Exemptions

(1) A building or other structure is not considered to be a farm-worker camp if it is:

(a) A single dwelling place, isolated and independent of other dwelling places, which is occupied solely by members of the same family;

(b) A single dwelling place, isolated and independent of other dwelling places, which is occupied by five or fewer persons who are unrelated to one another; or

(c) A hotel or motel provided that the housing provided to workers is provided under the same terms and conditions that is offered on a commercial basis to the general public.

(2) An operator of a farm-worker camp is not required to obtain the farm-worker camp operator's indorsement when the operator has a substantial ownership interest in the real property on which the camp is located or has any form of ownership interest in the business organization that operates the camp or is related by blood or marriage to a person with such interests provided:

(a) The property on which the camp is located is subject to a special farm use assessment under ORS 308A.050 to 308A.128; and, provided further,

(b) The business organization which operates the camp filed an income tax return reporting farm activity in the preceding tax year.

(3) Permanent employees of the farm-worker camp operator are not required to obtain a farm-worker camp operator indorsement, provided they have no financial interest in the camp or the business other than the wages paid to the employee.

Stat. Auth.: ORS 164, 165, 651, 658.730(1) & 962
Stats. Implemented: ORS 658.705(7) & 658.715(1)(b) - 658.715(2)
Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BLI 30-2005, f. 12-29-05, cert. ef. 1-1-06

839-014-0100
Procedure for Obtaining a Duplicate Indorsement

In the event a license with the indorsement is lost or stolen, the licensee shall submit a written request for a duplicate license and indorsement. The licensee shall state the reasons for the request and the circumstances of the loss or theft. The replacement license will indicate the word "duplicate" on the license. The written request shall be made to the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.705 - 658.850
Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96; BLI 30-2005, f. 12-29-05, cert. ef. 1-1-06

839-014-0105
Procedure for Renewing Indorsement

(1) Indorsement shall expire with the farm/forest contractor's license each year unless sooner revoked.

(2) Applications for renewal shall be made 30 days before the expiration date of the license by filing a renewal application, paying the appropriate fees, and filing proof of financial ability to pay wages and certain advances.

(3) Applications, fees and other forms and documents must be filed with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.705 - 658.850
Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96; BLI 30-2005, f. 12-29-05, cert. ef. 1-1-06

839-014-0200
Proof Required/Forms to Be Used

(1) Every applicant for a farm-worker camp operator's indorsement shall, in lieu of the bond or deposit required by ORS 658.415 and unless otherwise exempt, submit a bond or deposit with the application and continually maintain a bond or deposit approved by the commissioner. The applicant may make a deposit in cash or negotiable securities acceptable to the commissioner in lieu of the bond. The bond or deposit shall be conditioned upon:

(a) All sums legally owing to any person when the indorsee or the indorsee's agents have received such sums;

(b) All damages occasioned to any person by reason of any material misrepresentation, fraud, deceit or other unlawful act or omission by the indorsee, or the indorsee's agents or employees acting within the scope of their employment; and

(c) All sums legally owing to any employee of the indorsee.

(2) The bond referred to in section (1) of this rule shall be a properly executed corporate surety bond as evidenced by the completion of Form WH-157.

(3) The forms are available upon request from: Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.705 - 658.850
Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96; BLI 30-2005, f. 12-29-05, cert. ef. 1-1-06

839-014-0380
Action Against the Bond or Deposit

(1) Any person entitled to recover sums received by the indorsee or the indorsee's agents or damages occasioned to the person by reason of any material misrepresentation, fraud, deceit or other unlawful act or omission by the indorsee or the indorsee's agents or employees acting within the scope of their employment, or any employee of the indorsee who is legally owed any sum has a right of action against the surety on the bond or deposit with the commissioner. The individual may exercise this right or may assign this right to another.

(2) The action on the bond or on the deposit held by the commissioner may not be joined in a suit or action on the bond or against the commissioner brought for any other claim.

(3) Any person seeking to recover on the bond or from the deposit with the commissioner must first establish the farm-worker camp operator liability. The liability may be established in any of the following ways:

(a) A judgment of the court; or

(b) A final administrative order issued pursuant to statute or rule; or

(c) The acknowledgment of the farm-worker camp operator of such liability; or

(d) Other satisfactory evidence of liability as may be shown which establishes the liability.

(4) Claims against the bond or deposit will not be paid unless, within six months of the end of the license year to which the bond or deposit applies, the claimant or claimant's assignee gives notice of the claim by certified mail to the surety or the commissioner.

(5) Any claim or notice of claim filed pursuant to a claimant's right of action must be filed as follows:

(a) If the filing is against a surety bond, the claim or notice must be filed with the surety. The name and address of the surety may be obtained from the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305;

(b) If the filing is against a deposit held by the commissioner, the claim or notice must be filed with the Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305;

(6) The commissioner and the surety shall make payments on the bond or deposit in the following priority:

(a) Wage claims;

(b) Payments on all sums legally owing to any employee of the indorsee;

(c) Payments on all sums legally owing to any person when the indorsee or the indorsee's agents have received such sums;

(d) Payments on all damages occasioned to any person by reason of any material misrepresentation, fraud, deceit or other unlawful act or omission by the indorsee or the indorsee's agents or employees acting within the scope of their employment;

(e) If there are insufficient funds to pay all sums, in accordance with the priority of payment, in full, such sums will be paid in part.

Stat. Auth.: ORS 164, 165, 651, 658 & 962
Stats. Implemented: ORS 658.705 - 658.850
Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96; BLI 30-2005, f. 12-29-05, cert. ef. 1-1-06

839-014-0630
Waiver from Telephone Requirement

(1) An employer may request a waiver from the requirements of ORS 659A.153(3) and these rules. Prior to the granting of any request for waiver the employer must demonstrate to the Commissioner that:

(a) Compliance with the statute and rules would constitute an unreasonable hardship for the employer; and

(b) The employer meets any and all requirements of the Division for an emergency medical plan.

(2) Persons desiring a waiver, may apply to the Commissioner on a form prepared by the Bureau. The completed waiver application form shall be submitted to the Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, N.E., Bldg. E-1, Salem, OR 97305.

(3) Persons desiring to obtain a waiver must submit, with the application, a copy of the emergency medical plan, which meets the requirements

of the rules of the Division.

(4) In determining what circumstances constitute an unreasonable hardship the Commissioner shall consider the following:

(a) Any circumstances presented by the employer in support of the application;

(b) The number of employees occupying the housing;

(c) The location of the housing;

(d) The length of time the housing is intended to be occupied;

(e) Any other relevant information.

(5) In considering the request for the waiver the Commissioner shall consider:

(a) The history of the employer in complying with the emergency medical plan;

(b) Any other relevant information.

(6) The Commissioner may grant the waiver request when the Commissioner determines that the provisions of section (1) of this rule are met. The Commissioner may specify any conditions on approval of the request. If the request is denied, the Commissioner shall state each reason for the denial.

Stat. Auth.: ORS 164, 165, 651, 658, 659.285(3) & 962
Stats. Implemented: ORS 659.285(3)
Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BLI 30-2005, f. 12-29-05, cert. ef. 1-1-06

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Construction Contractors Board
Chapter 812

Rule Caption: Revision of Independent Contractor form adopted by rule.
Adm. Order No.: CCB 1-2006(Temp)
Filed with Sec. of State: 1-11-2006
Certified to be Effective: 1-11-06 thru 7-10-06
Notice Publication Date:
Rules Amended: 812-001-0200, 812-003-0240
Subject: OAR 812-001-0200 is amended to implement SB 1002 (chapter 249, OR Laws 2005) that reduced the requirement to commit a residential construction agreement to a written contract from $2,500 to $2,000.

OAR 812-003-0240 is amended to adopt the revised independent contractor form due to errors on the form. The information on the form must be accurate to implement SB 323 (chapter 533 OR laws 2005) since applicants will be certifying that they are complying with terms of the statute.
Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0200
Consumer Protection Notices

(1) The Construction Contractors Board adopts the form entitled “Information Notice to Owner,” as revised January 10, 2006. This form may be obtained from the agency. Previously adopted versions of the Information Notice may also be used.

(2) The Construction Contractors Board adopts the form “Information Notice to Property Owners About Construction Responsibilities” as revised June 1, 2004.

(3) The Construction Contractors Board adopts the form “Notice of Compliance with Homebuyer Protection Act (HPA) as revised December 16, 2003.

(4) The Construction Contractors Board adopts the form “Model Features for Accessible Homes” dated December 6, 2005.

Stat. Auth.: ORS 87.093, 670.310, 701.055, 701.235 OL 2005, Ch. 734
Stats. Implemented: ORS 87.093, 701.055, 701.235 & OL 2005, Ch. 734
Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thur 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; Renumbered from 812-001-0020, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06

812-003-0240
Independent Contractor

(1) As used in ORS chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an “independent contractor” if the standards of ORS 670.600 are met.

(2) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Workers Compensation Division, and Department of Revenue of the State of Oregon, under authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

(3) The Board adopts the form “Independent Contractor Certification Statement” as revised December 15, 2005. An applicant must use this form to meet the requirements of ORS 701.075(1)(j).

Stat. Auth.: ORS 670.310, 701.235, OL 2005 Ch. 533
Stats. Implemented: ORS 670.600, 670.605, 701.075, OL 2005 Ch. 533
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06

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Department of Administrative Services
Chapter 125

Adm. Order No.: DAS 15-2005(Temp)
Filed with Sec. of State: 12-22-2005
Certified to be Effective: 12-22-05 thru 5-21-06
Notice Publication Date:
Rules Adopted: 125-247-0290, 125-247-0291, 125-247-0292
Rules Amended: 125-246-0170
Subject: DAS adopts OAR 125-247-0292 relating to an agency retaining its own general or special counsel; the adopts OAR 125-247-0290 and 125-247-0291 relating to an agency procuring interstate or tribal agreements; and amends OAR 125-246-0170 relating to delegation of purchasing authority.

I. OAR 125-247-0292: An immediate temporary rule is needed for the selection of DAS Risk Management outside counsel. Attorney General Hardy Meyer has authorized DAS Risk Management to obtain outside counsel. Current DAS rules do not contemplate the selection and contracting for outside counsel, since selection is usually completed by the Department of Justice. In certain circumstances when a conflict of interest exists, it is necessary to create a selection process similar to that used by the Department of Justice within DAS rules for the immediate use of DAS Risk. ORS 180.235 provides for the Attorney General to authorize officers or agencies to employ their own general or special counsel. This selection process is established to provide an appropriate selection process when such an authorization is made.

Effective October 1, 2003, DAS temporarily amended then-OAR 125-020-0610 to provide a process for State agencies subject to DAS purchasing authority (Agencies) to retain its own general or special counsel, other than the Department of Justice, pursuant to ORS 180.235. The temporary rule in 2003 was needed under emergency circumstances to allow Agencies to expediently obtain such counsel during litigation without delay which would adversely affect the interests of the Agency. That Rule expired on March 28, 2004. DAS has been advised that this temporary rule provision is still required for Agencies to retain counsel quickly and properly.

II. OAR 125-247-0290 and 125-247-0291: When the Public Contracting Code and related rules commenced on March 1, 2005, it appeared that interstate agreements and tribal agreements would be outside this Code and its related rules. DAS has been advised that these types of agreements fall under the Code and require a procurement process.

DAS worked with a Rules Advisory Committee to develop these temporary rules to provide the required processes. Agencies need these temporary rules under emergency circumstances to expediently make agreements in accordance with ORS 190 et seq. without further delays that would adversely affect the interests of the Agencies.

III. OAR 125-246-0170: Delegation of Authority. Initially, the DAS permanent rulemaking timeline estimated filing an amended Delegation of Authority rule by December. Delays arose, and the revised timeline estimates filing permanent rules no sooner than February, 2006. This rule needs to be amended as a temporary rule as follows:

A. Authority to Conduct the Special Procurements of Sections I. and II. Above. The DAS public contracting rules separate procurement process (how it must be done) from authority to use the

procurement process (who may do it). Only one rule gives this authority: OAR 125-246-0170. The special procurements by temporary rules described in sections I. and II. above create procurement processes only. To be able to use these processes, Agencies must receive a delegation of authority. This temporary rule, OAR 125-246-0170, authorizes Agencies to use the Special Procurements described above in sections I. and II. by amendments found in subsections (7)(a)(Q) (Special Procurement for General or Special Counsel), (7)(a)(O) (Special Procurements for Interstate and International Agreements), and (7)(a)(P) (Special Procurements for Tribal Agreements).

B. Authority to Conduct Other Special Procurements. Effective on March 1, 2005, OAR 125-247-0288 created ten (10) special procurements by rule, which appeared to replace old exemptions in some instances and to be available to the Agencies. By omission, authority to use these special procurements was limited, however, in OAR 125-246-0170 to the State Procurement Office, only. This caused considerable confusion and misunderstandings among the Agencies and the State Procurement Office. Some Agencies used certain special procurements based upon misunderstanding and their prior ability to use similar exemptions before March 1, 2005. Other Agencies requested delegations from the State Procurement Office on a case-by-case basis, creating unnecessary bottlenecks and delay. Other Agencies did not use these special procurements and lost their benefit for streamlining the procurement process.

The temporary rule amendments in sections (6)(a)(I) and (7)(a)(F) through (N) give Agencies the authority to use these special procurements, and as a result, the Agencies' practices will become compliant, consistent, clarified, and streamlined.

C. Authority to Conduct Competitive Sealed Bidding and Competitive Sealed Proposals Not Exceeding $150,000. Agencies are currently authorized to conduct Intermediate Procurements up to $150,000. ORS 279B.070 and OAR 125-247-0270 describe Intermediate Procurements, which may include Quotes, Invitations to Bid (ITBs) or Requests for Proposals (RFPs). Two other methods were created by the Code and DAS Rules: Competitive Sealed Bidding (ITBs) and Competitive Sealed Proposals (RFPs). By omission, only the State Procurement Office was authorized to conduct Competitive Sealed Bidding or Proposals. This caused considerable confusion and misunderstandings among the Agencies and the State Procurement Office. Some Agencies continued issuing ITBs and RFPs under the unauthorized methods, while others used the authorized Intermediate Procurements. The State Procurement Office has experienced additional workload addressing this confusion among Agencies on a case by case basis. The temporary rule amendments in section (6)(a)(F) and (G) give Agencies the authority to use Competitive Seal Bidding and Proposals not exceeding $150,000, and as a result, the Agencies' practices will become compliant, consistent, clarified, and streamlined.

D. Authority to Conduct Sole-Source Procurements Not Exceeding $150,000. The current Delegation of Authority rule, OAR 125-246-0170(7)(a)(A) was intended by DAS to give Agencies the authority to conduct sole-source procurements not exceeding $150,000, following the process for sole-source procurements described in ORS 279B.075 and OAR 125-247-0275. This provision's language was inadvertently difficult to understand and has required repetitive interpretations by the State Procurement Office. The new language contained in subsection (7)(a)(H) clearly describes the original intentions of DAS and does not change the Agencies' authority to procure sole-source procurements. The effect of this temporary rule amendment would be the immediate reduction of work load and delays arising from individual requests from Agencies for authority interpretations and problem-solving.

E. Authority to Execute Contracts. The current Delegation of Authority rule, OAR 125-246-0170(2) and (5), provides that the Director delegates certain authority to the heads of Agencies, on the condition that the heads of Agencies delegate the same authority to the Agencies' Designated Procurement Officers (DPOs); section (5) describes the DPOs duties and responsibilities, including the authority to award and execute contracts. This structure has worked well for certain Agencies, like the Department of Education, who have relied on this rule to insure that execution authority passed through the DPO and could be subdelegated by the DPO to others.

In the instance of execution authority, one size did not fit all Agencies. Some Agencies, like the Department of Human Services and Department of Justice, had reasons to want their heads to subdelegate to individuals other than the DPO and not through the DPO. DAS worked with a Rules Advisory Committee to develop the temporary rule amendment found in sections (2) and (5). These amendments represent a workable compromise, whereby Agencies who value delegation to the DPO may keep their structure. The amendments also give authority to heads of Agencies to subdelegate to other individuals in accordance with a written alternative subdelegation plan. Without this temporary rule, some Agencies may be operating under a misunderstanding and not under the current rule as it stands. DAS did not intend to prohibit execution authority by other individuals or to undermine DPO authority. The effect of this temporary rule amendment will be to provide a rule with one clear meaning, not subject to opposing interpretations, and to provide a structure for execution authority that is consistent with various practices among the Agencies.

F. Authority to Exempt Products from Public Improvement Specification Requirements. ORS 279C.345 states requirements for Public Improvement Specifications. The Director of DAS or a local contract review board may exempt certain products from these requirements, based upon specified findings. Inadvertently, OAR 125-246-0170 did not give authority to the Chief Procurement Officer to make these exemptions. Also the Oregon Department of Transportation (ODOT) overlooked this statute during the Legislative Session of 2005. Now, ODOT has an urgent need for a delegation of authority in order for ODOT's managers to efficiently conduct their ongoing work with public improvement specifications. The Chief Procurement Officer needs this authority to delegate to ODOT and to other Agencies who may demonstrate their need. The effect of this temporary rule amendment in section (3)(c) is to fulfill DAS's original intention to delegate this authority to the Chief Procurement Officer, avoid the unnecessary involvement of the Director with individual requests, and meet ODOT's urgent need.

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

125-246-0170
Delegation of Authority

(1) Policy. Pursuant to ORS 279A.140, the Director of the Department represents the Authorized Agencies in Procurement and is ultimately responsible for the Procurement of the Authorized Agencies. These Rules express this authority, clarifying responsibilities, instilling public confidence, promoting efficient use of resources, implementing the Code and socioeconomic programs, allowing meaningful competition, and providing a structure that supports evolving procurement methods, all pursuant to the policy of ORS 279A.015. The expenditure of public funds and other Public Contracting impacting State assets require individual representation of the State's interests. The Director and delegatees may delegate or revoke authority by any of the following forms:

(a) A Written policy issued by the Department;

(b) An Interagency Agreement, signed by the Chief Procurement Officer and the Authorized Agency; or

(c) By this Rule. All delegations pursuant to this Rule, either to any Authorized Agency or the State Procurement Office, may be changed by policy or letter issued from the Director or the Director's delegatee.

(2) Delegation to Authorized Agency Heads and Designated Procurement Officers. Pursuant to ORS 279A.075, the Director of the Department may delegate and subdelegate the Director's authority under ORS 279A.050 in whole or in part. By and subject to this Rule, the Director delegates authority to the heads of Authorized Agencies on the condition that the heads of Authorized Agencies subdelegate such authority to the Agencies' Designated Procurement Officers, who may further subdelegate such authority in accordance with policies of the Agencies (chain of delegation). Heads of Authorized Agencies may subdelegate the authority to execute Contracts, as described in subsection (5)(f), to other individuals within their respective Agency, in accordance with a Written alternative

subdelegation plan. Each individual in the chain of delegation remains responsible for the exercise of authority by the subdelegatees, and subdelegation does not waive this responsibility. Each delegator must determine and document that the delegatee is capable and accountable for the Procurement. The Designated Procurement Officer, appointed within each Authorized Agency, will be responsible for all procurement activity under delegated authority for the Authorized Agency, as described in Section (5) of this Rule.

(3) Delegation to the State Procurement Office. The Director of the Department delegates to the Chief Procurement Officer of the State Procurement Office of the Department the rights, powers and authority invested in the Director to:

(a) Delegate and subdelegate these authorities in whole or in part pursuant to ORS 279A.075;

(b) Approve Special Procurement requests, pursuant to ORS 279B.085 and related Rules;

(c) Approve and issue exemption orders, pursuant to ORS 279C.335, ORS 279C.345, and related Rules;

(d) Create all procedures and Specifications required by the Public Contracting Code and these Rules;

(e) Receive, maintain, and act upon information contained in reports, required by the Public Contracting Code and these Rules;

(f) Receive, hear, and resolve protests pursuant to ORS 279B.400 to 279B.420;

(g) Review and hear prequalifications, debarments, and DBE Disqualifications pursuant to ORS 279B.425, 200.065(5), 200.075(1) and 279A.110;

(h) Approve Unanticipated Amendments pursuant to OAR 125-246-0560(2);

(i) Approve expedited notices for Sole-Source Procurements pursuant to OAR 125-247-0275;

(j) Procure and administer Cooperative Procurements and receive, hear, and resolve related protests and disputes, pursuant to ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0470;

(k) Approve Brand Name Specifications pursuant to OAR 125-247-0288(3);

(l) Determine authorization for purchases through federal programs pursuant to ORS 279A.180 and OAR 125-246-0360; and

(m) Other actions of the State Procurement Office specifically required by these Rules.

(4) Duties and Responsibilities of the State Procurement Office. The duties and responsibilities of the State Procurement Office are as follows:

(a) Conduct Procurements, including administration of Contracts, for Agencies.

(b) Develop and maintain State-wide Procurement rules, policies, procedures and standard contract terms and conditions as necessary to carry out the Public Contracting Code.

(c) Subdelegate authority in whole or part, based upon consideration and documentation of the following factors in making this decision:

(A) The procurement expertise, specialized knowledge and past experience of the individual;

(B) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(C) The individual's adherence to the Code, these Rules, standards, procedures and manuals; and

(D) The ability and assent of the individual to be accountable for the delegated Procurement;

(d) Revoke authority delegated by the State Procurement Office in whole or part, based upon consideration and documentation of the following factors in making this decision:

(A) The procurement expertise, specialized knowledge and past experience of the individual;

(B) The impact of the subdelegation of the Procurement on efficiency and effectiveness;

(C) The individual's adherence to the Code, these Rules, standards, procedures and manuals; and

(D) The ability and assent of the individual to be accountable for the delegated Procurement;

(e) Maintain a file of Written subdelegation authority granted and revoked under these Rules in accordance with the law;

(f) Provide guidance and leadership on Procurement matters to Agencies and their employees;

(g) Provide training and instruction opportunities to assure SPO staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy;

(h) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, delegations, Special Procurements and exemptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all delegations and subdelegations;

(i) Based upon monitoring described in Subsection (4)(h), determine opportunities, establish targets, and utilize methods pursuant to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(j) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

(5) Duties and Responsibilities of Designated Procurement Officers and Delegates. Pursuant to Section (1) of this Rule, every Authorized Agency must appoint a Designated Procurement Officer to serve that Authorized Agency. If none is appointed, the agency head assumes the authority, duties and responsibilities of the Designated Procurement Officer. Unless otherwise provided in this Rule, the authority, duties and responsibilities of the Designated Procurement Officer are as follows:

(a) Serve as the exclusive supervisor and manager of the Authorized Agency's Procurement system;

(b) Conduct, supervise and manage Procurement for the Authorized Agency in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Officer has delegated procurement authority;

(c) Prepare or monitor the use of Specifications for all Procurements of the Authorized Agency;

(d) Issue Solicitations and implement other non-Solicitation methods, only as authorized pursuant to this Rule, for all Procurements of the Authorized Agency;

(e) Award Contracts only as authorized pursuant to this Rule;

(f) Execute Contracts only as authorized pursuant to this Rule and as follow:

(A) Definition. "Execute Contracts" for purposes of this Rule means to sign the Contracts and perform all necessary formalities to bring the Contracts into their final, legally enforceable forms. Execution of a Contract includes, but is not limited to, the authority to bind the funds of the Agency.

(B) Limited Subdelegation. If the Designated Procurement Officer desires to subdelegate in whole or in part the authority to Execute Contracts, the Agency may establish a policy that limits these subdelegations to individuals meeting specific criteria for responsibility.

(g) Comply with the reporting requirements of the Code, these Rules, and Department policies;

(h) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, delegations, Special Procurements and exemptions. Monitoring Contract development, awards, and compliance applies to all delegations and subdelegations;

(i) Based upon the monitoring described in Subsection (5)(g), determine opportunities, establish targets, and utilize methods pursuant to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.

(6) Delegation by Rule Based Upon Thresholds.

(a) Delegation to Authorized Agencies. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies for the following Procurements, including Contract Administration. This delegation requires the heads of the Authorized Agencies to subdelegate authority for the following Procurements to the Designated Procurement Officers of the respective Authorized Agencies:

(A) Small Procurements of Supplies and Services up to and including the Threshold of $5,000, pursuant to ORS 279B.065 and related Rules;

(B) Direct appointments of Architectural, Engineering and Land Surveying Services and Related Services pursuant to OAR 125-248-0200;

(C) Intermediate Procurements of Supplies and Services greater than $5,000 and not exceeding $150,000, pursuant to ORS 279B.070 and OAR 125-247-0270, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(D) Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services pursuant to ORS 279C.110 and OAR 125-248-0210, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(E) Intermediate Procurements for Public Improvements estimated not to exceed $100,000, or not to exceed $50,000 in the case of Contracts for highways, bridges and other transportation projects, pursuant to OAR 125-249-0160, provided that the Authorized Agency follows the requirements as set forth in the policy of the Department;

(F) Competitively Sealed Bidding not exceeding $150,000 and pursuant to OAR 125-247-0255 or 125-247-0256;

(G) Competitively Sealed Proposals not exceeding $150,000 and pursuant to OAR 125-247-0260 or 125-247-0261;

(H) Sole-Source Procurements not exceeding $150,000 and pursuant to ORS 279B.075 and OAR 125-247-0275; and

(I) Purchase of Used Personal Property Special Procurements not exceeding $150,000 and pursuant to OAR 125-247-0288(9).

(b) Delegation to State Procurement Office. By this Rule, and except as otherwise provided by the policy of the Department, the Director of the Department delegates authority to the State Procurement Office for the following Procurements, including Contract Administration:

(A) Small Procurements of Supplies and Services on behalf of Agencies and pursuant to ORS 279B.065;

(B) Intermediate Procurements of Supplies and Services greater than $5,000 and not exceeding $150,000, on behalf of Agencies and pursuant to ORS 279B.070 and OAR 125-247-0270;

(C)Informal Selection procedures of Architectural, Engineering and Land Surveying Services and Related Services, on behalf of Agencies and pursuant to ORS 279C.110 and OAR 125-248-0210;

(D) Competitive Quotes of Public Improvements estimated not to exceed $100,000, or not to exceed $50,000 in the case of Contracts for highways, bridges and other transportation projects, pursuant to ORS 279C.410 notes and OAR 125-249-0160;

(E) All Procurements exceeding the Thresholds for Intermediate Procurements, Informal Procurements, or Competitive Quotes, pursuant to ORS 279B.070 and OAR-125-247-0270 (Supplies and Services); ORS 279C.110 and OAR 125-248-0210 (Architectural, Engineering and Land Surveying and Related Services); and ORS 279C.410 notes and OAR 125-249-0210 (Public Improvements), respectively; and

(F) All Procurements otherwise delegated to an Authorized Agency pursuant to this Section (6) if the State Procurement Office, at its own discretion, assumes this delegated authority, based upon its determination that any Authorized Agency refuses or fails to comply with any delegation described in this Section (6).

(7) Delegation by Rule Based Upon Type:

(a) Delegation to Authorized Agencies. By this Rule, the Director of the Department delegates authority to the heads of all Authorized Agencies for the following Procurements, including Contract Administration. This delegation by Rule requires that the heads of the Authorized Agencies subdelegate the authority for such Procurements to the Designated Procurement Officers of the respective Authorized Agencies. If any head of an Authorized Agency does not subdelegate to an individual as a Designated Procurement Officer, then by definition, the nondelegating head of the Authorized Agency acts in the place of the Designated Procurement Officer.

(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with OAR 125-246-0430, provided that:

(i) No such Procurement results in a Price Agreement;

(ii) Procurements of Supplies and Services do not exceed the Threshold of $150,000, including all Amendments, pursuant to OAR 125-246-0560 and the Authorized Agency follows the requirements as set forth in the policy of the Department; or

(iii) Procurements of Public Improvements do not to exceed $100,000, or not to exceed $50,000 in the case of Contracts for highways, bridges and other transportation projects, including Amendments pursuant to OAR 125-246-0560, and the Authorized Agency follows the requirements as set forth in the policy of the Department.

(C) Federal program Procurements within delegated Threshold authority pursuant to Section (6) above or to a delegation agreement with the State Procurement Office, and in accordance with ORS 279A.180 and related Rules;

(D) Client Services Special Procurements pursuant to OAR 125-247-0288(1);

(F) "Client Services" procured under ORS 279B.055 through 279B.085 and related Rules, including all amendments pursuant to OAR 125-247-0560;

(G) Renegotiations Special Procurements pursuant to OAR 125-247-0288(2) and as follows: the Authorized Agency is limited to the same authority delegated to that Agency with regard to the Original Contract and may not collectively exceed any Threshold related to its authority to procure the Original Contract, except this limit may be exceeded with the prior Written approval of the Chief Procurement Officer or delegatee of the State Procurement Office;

(H) Advertising Contracts Special Procurements pursuant to OAR 125-247-0288(4);

(I) Equipment Repair and Overhaul Special Procurements pursuant to OAR 125-247-0288(5);

(J) Contracts for Price Regulated Items Special Procurements pursuant to OAR 125-247-0288(6);

(K) Investment Contracts Special Procurements pursuant to OAR 125-247-0288(7);

(L) Food Contracts Special Procurements pursuant to OAR 125-247-0288(8);

(M) Business Assistance Services Special Procurements pursuant to OAR 125-247-0288(10);

(N) Reverse Auctions Special Procurements pursuant to OAR 125-247-0288(11) and only if authority is delegated by Department policy or a delegation agreement with the State Procurement Office;

(O) Interstate and International Agreements Special Procurements pursuant to OAR 125-247-0290 or an approved Interstate Agreements Special Procurement pursuant to OAR 125-247-0287;

(P) Tribal Agreements Special Procurements pursuant to OAR 125-247-0291 or an approved Tribal Agreements Special Procurement pursuant to OAR 125-247-0287; and

(Q) Special Procurements of General or Special Counsel Authorized by the Attorney General, pursuant to OAR 125-247-0292. Notwithstanding any other rule, the Permitted Agency Head may subdelegate any authority related to the Procurement of the Contract within the Permitted Agency, without restriction, provided the Agency Head has determined that the individual receiving the delegation has the requisite skills and knowledge to carry out the sub delegation. Such subdelegations may be further delegated within the Permitted Agency provided the delegator has determined that each individual receiving the delegation has the requisite skills and knowledge to carry out the subdelegation.

(b) Delegation to State Procurement Office. By this Rule, and except as otherwise provided by the policy of the Department, the Director of the Department delegates authority to the State Procurement Office for the following Procurements, including Contract Administration:

(A) Cooperative Procurements in accordance with ORS 279A.200 through 279A.225 and OAR 125-246-0400 through 125-246-0470, except as provided in Section (7)(a)(C) of this Rule; and the State Procurement Office may delegate this authority by agreement to an Authorized Agency, provided this delegation to an Authorized Agency meets the following criteria:

(i) There is no pre-existing Department Price Agreement or Mandatory Use Agreement;

(ii) The proposed Procurement does not negatively impact other Contracts;

(iii) A competitive process was used for the original agreement; and

(iv) The initial Solicitation was or will be advertised in Oregon.

(B) Special Procurements pursuant to ORS 279B.085 and related Rules;

(C) Sole-Source Procurements in accordance with ORS 279B.075 and OAR 125-247-0275;

(D) Emergency Procurements in accordance with ORS 279B.080, 279C.335(5), OAR 125-248-0200, or related Rules;

(E) Federal program Procurements in accordance with ORS 279A.180 and OAR 125-246-0360; and

(F) All Procurements otherwise delegated to an Authorized Agency pursuant to this Section (7) if the State Procurement Office, at its own discretion, assumes this delegated authority, based upon its determination that any Authorized Agency refuses or fails to comply with any delegation described in this Section (7).

(8) Supplemental Delegations by the State Procurement Office:

(a) Any Authorized Agency may submit a request for delegation to the State Procurement Office for Procurement authority in accordance with the requirements of the Public Contracting Code, this Rule, and the policy of the Department.

(b) The Department will identify in policy the necessary requirements for requesting and obtaining delegated authority pursuant to this Rule.

(c) The State Procurement Office may delegate and revoke its Procurement authority, in whole or in part, to an Authorized Agency, in accordance with this Rule and the policy of the Department. All delegations must be approved in Writing by the Chief Procurement Officer of the State Procurement Office and based upon a determination, considering relevant factors set forth in the policy of the Department The State Procurement Office may delegate its authority to meet short-term demands upon its staff and resources, arising from unusual circumstances.

(9) Other Requirements:

(a) Authorized Agencies must maintain good contracting procedures in accordance with the Public Contracting Code and related Rules. Delegation of authority does not exempt an individual or an Authorized Agency from the requirements of the Public Contracting Code, related Rules, and policies of the Department. To the extent applicable, an individual or Authorized Agency receiving any delegated authority is responsible

for following the Public Contracting Code, related Rules, unless otherwise indicated.

(b) Any delegation of authority pursuant to this Rule may be revoked by the delegator, provided the revocation is in Writing and the delegatee receives reasonable notice of the revocation. The revocation must be based upon a determination, as set forth in the policy of the Department.

(c) The Authorized Agency must maintain copies of letters or agreements granting delegation of authority.

(d) When an Authorized Agency has delegated authority pursuant to this Rule, the Authorized Agency's signature must be deemed both the execution and approval of the Contract.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.075 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06

125-247-0290
Special Procurements: Interstate and International Agreements

(1) Authority. An Authorized Agency with delegated authority in accordance with OAR 125-246-0170 may use Class Special Procurement Number 040-1105, which is incorporated into and implemented by this rule, to enter into written Interstate or International agreements for Supplies and Services.

(2) Definitions.

(a) "Interstate Agreements" is defined in ORS 190.410 to 190.440 and means agreements among:

(A) Any county, city, special district or other public corporation, commission, authority or entity organized and existing under laws of this state, or any other state, or under the city or county charter of any county or city of this or any other state;

(B) Any agency of this state or any other state; and

(C) Oregon Health and Science University. "Interstate Agreements" also includes public corporations and other public bodies in Oregon that do not satisfy the definition of "contracting agency" in ORS 279B.010(1)(b).

(b) "International Agreements" is defined in ORS 190.480 to 190.490 and means agreements among: a "state agency" or "agency," including every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury. "International Agreements" may include any nation or public agency in any nation other than the United States.

(3) Process.

(a) Agencies may procure and contract for Supplies and Services with other states and related entities outside of the state of Oregon according to the provisions of ORS 190.410 to 190.440.

(b) Agencies may procure and contract with other nations and related entities outside of the United States for Supplies and Services according to the provisions of ORS 190.480 to 190.490.

(c) All Interstate and International Agreements, when required, are subject to review and approval by the Attorney General.

(4) Effective Date. This Rule is effective retroactively to March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06

125-247-0291
Special Procurements: Tribal Agreements

(1) Application and Authority. This Rule applies to Agreements with American Indian Tribes and Agencies of American Indian Tribes. An Authorized Agency that has delegated authority under OAR 125-246-0170 may use Class Special Procurement Number 041-1105, which is incorporated into and implemented by this Rule, to enter into Written agreements for Supplies and Services with American Indian tribes and with agencies of American Indian tribes.

(2) Contracting Procedures. Each Authorized Agency that has delegated authority may enter into written agreements for Supplies and Services with American Indian tribes and their agencies through negotiation, direct award, direct appointment, or in any other manner or procedure reasonably calculated to result in an agreement that satisfies the legal requirements and limitations that constrain the contracting entities that are parties to the agreement.

(3) Effective Date. This Rule is effective retroactively to March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06

125-247-0292
Special Procurements: General or Special Counsel Authorized by the Attorney General

(1) Under ORS 180.235, the Oregon Attorney General may authorize a public officer or Agency to retain its own general or special counsel other than the Department of Justice (commonly referred to as conflict counsel). This Rule governs the process for obtaining such counsel.

(2) Definitions For purposes of this Rule only, these terms have the following meanings:

(a) "Attorney General" means the Attorney General of the State of Oregon.

(b) "Permitted Agency" means the a public officer or Agency that the Attorney General authorized to retain its own general or special counsel other than the Department of Justice under ORS 180.235.

(c) "Authorized Legal Services" means the legal services as authorized by the Attorney General for the particular matter or class of matters and as required by the Permitted Agency.

(d) "Outside Counsel" means general or special counsel selected by the Permitted Agency under this Rule.

(e) "Firm" means the proprietorship, partnership or professional legal corporation engaged in the practice of law of which Outside Counsel is a partner, a shareholder, an associate, a member, or a lawyer serving as "of counsel."

(f) "Solicitation" means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

(3) Selection Criteria:

(a) The Permitted Agency must select the Firm it considers most advantageous based on the following factors:

(A) The knowledge, skills and ability of the Firm that will provide Authorized Legal Services. The Firm's ability to provide Authorized Legal Services includes the training and expertise of the Firm attorneys, including Outside Counsel. Outside Counsel must be a member of the Oregon State Bar pursuant to ORS 180.235(2);

(B) The Firm's experience, level of expertise and suitability to perform the Authorized Legal Services;

(C) Whether the Firm's available personnel possess any required licenses or certifications required to perform the legal services for the Authorized Legal Services, such as licenses to practice law in the appropriate jurisdiction, or to appear in a certain forum;

(D) The Outside Counsel's availability and capability to perform the Authorized Legal Services and meet the Agency's needs;

(E) The commitment the Outside Counsel and Outside Counsel's Firm can make to the Permitted Agency to meet the Agency's needs;

(F) The value of the Firm's legal services, taking into account the cost of the Firm's legal services; and

(G) Other factors the Permitted Agency considers relevant to accomplish an optimal, timely outcome.

(b) In weighing the evaluation factors, no single factor is determinative.

(4) Scope of Firms Considered The Solicitation process may range from direct negotiation and contracting with a single firm to publication of a request for proposals. The Permitted Agency must extend Solicitations to those firms that it considers reasonable and practical to solicit under the circumstances, and must take into consideration the following factors:

(a) When the subject matter of the Authorized Legal Services requires specialized knowledge in a particular field of law, the Permitted Agency may limit the Solicitation to prospective Firms that have a reputation of subject matter expertise in that field of law;

(b) The Permitted Agency must limit the number of Firms considered under the Solicitation as appropriate if the interests of the Permitted Agency would likely be adversely affected by delay in obtaining a Firm or through broad distribution of the Solicitation; and

(c) Other factors the Permitted Agency considers relevant to accomplish an optimal, timely outcome.

(5) Documentation of Selection:

(a) The Permitted Agency must prepare a record of selection signed by the public officer or Agency designated to be responsible for the selection process. The record of selection must include the public officer's or Agency's summary of:

(A) The Solicitation process used and the Firms considered in the Solicitation process;

(B) Why the selected firm is considered most advantageous to the Permitted Agency; and

(C) Why the scope of the Solicitation was reasonable and practical under the circumstances.

(b) As used in (5)(a) above, the public officer may include a member of the Permitted Agency's board or commission.

(c) The record of solicitation must be retained by the Permitted Agency within the Procurement File for the Firm.

(6) Notwithstanding any other Rule, the Permitted Agency may amend Contracts falling within the scope of this rule from time to time and as it deems necessary without regard to competition provided such amendments are within the scope of the Attorney General's authorization under ORS 180.235.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.075, 279B.085
Hist.: DAS 15-2005(Temp), f. & cert. ef. 12-22-05 thru 5-21-06

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Notice Publication Date: 12-1-05
Rules Repealed: 125-055-0110
Subject: The Health Insurance Portability and Accountability Act (HIPAA) Security Rules, 45 CFR 164.302 - 164.318, became effective on April 20, 2005. OAR 125-055-0100 through 125-055-0130 implement contract requirements for agencies that are "covered entities" that contract with a business associate, as defined under HIPAA.

OAR 125-055-0110 must be repealed to incorporate the requirements imposed by the HIPAA Security Rules.
Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

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Department of Agriculture
Chapter 603

Adm. Order No.: DOA 19-2005(Temp)
Filed with Sec. of State: 12-23-2005
Certified to be Effective: 1-3-06 thru 5-31-06
Notice Publication Date:
Rules Amended: 603-025-0150
Subject: Senate Bill 479, from the 2005 Legislature, authorizes the Oregon Department of Agriculture to establish rules to certify qualified machinery and equipment for tax exemption. These temporary rules establish definitions and describe the process for application and determination of certification for qualified machinery and equipment. The temporary rules also state that a contested case procedure for denial of certification is established in ORS Chapter 183. A failure to enact these temporary rules will result in serious prejudice to the public interest as persons wishing to benefit from Senate Bill 479 would be precluded from filing for certification and exemption in a timely fashion and would thus subject all persons seeking this exemption to late filing penalties.

The principle document relied upon is Senate Bill 479 which is available at: www.leg.state.or.us/05reg/measpdf/sb0400.dir/sb0479.en.pdf or is available at the Oregon Department of Agriculture for inspection.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-025-0150
Food Processing Establishments

In addition to the provisions of OAR 603-025-0020, a food processing establishment shall comply with the following:

(1) Construction and Repair of Equipment and Utensils: All plant equipment and utensils shall be suitable for their intended use, so designed and of such material and workmanship as to be adequately cleanable, and properly maintained. The design, construction and use of such equipment and utensils shall preclude the adulteration of foods with lubricants, fuel, metal fragments, contaminated water or any other contaminants. All equipment shall be installed and maintained so as to facilitate the cleaning of the equipment and of all adjacent spaces. Aisle or working spaces between equipment and between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties without contamination of food or food contact surfaces with clothing or personal contact.

(2) Sanitary Maintenance and Methods:

(a) Separate rooms shall be provided for those operations which may cause contamination of food products with undesirable microorganisms, chemicals, filth or other extraneous material. Building, fixtures and other physical facilities of the establishment shall be kept in good repair and in a sanitary condition. Cleaning operations shall be conducted so as to minimize the danger of contamination of food and food-contact surfaces. Detergents, sanitizers and other supplies employed in cleaning and sanitizing procedures shall be free of significant microbiological contamination and shall be safe and effective for their intended uses. Cleaning and sanitizing agents shall be subject to approval by the department;

(b) All utensils and product-contact surfaces of equipment shall be cleaned as frequently as necessary to prevent contamination of food and food products. Nonproduct-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to minimize accumulation of dust, dirt, food particles, and other debris. Single-service articles (such as utensils intended for one-time use, paper cups, paper towels, etc.) should be stored in appropriate containers and handled, dispensed, and disposed of in a manner that prevents contamination of food or food-contact surfaces. Where necessary to prevent the introduction of undesirable microbiological organisms into food products, all utensils and product-contact surfaces of equipment used in the plant shall be cleaned and sanitized prior to such use and following any interruption during which such utensils and contact surfaces may have become contaminated. Where such equipment and utensils are used in a continuous production operation, the contact surfaces of such equipment and utensils shall be cleaned and sanitized on a predetermined schedule using adequate methods for cleaning and sanitizing. Sanitizing agents shall be effective and safe under conditions of use. Any facility, procedure, machine or device may be acceptable for cleaning and sanitizing equipment and utensils if it is established that such facility, procedure, machine, or device will routinely render equipment and utensils clean and provide adequate sanitizing treatment;

(c) All cleaned and sanitized portable equipment and utensils with product-contact surfaces should be stored in such a location and manner that product-contact surfaces are protected from splash, dust, and other contamination;

(d) Adequate and convenient facilities for handwashing and, where appropriate, hand sanitizing shall be provided at each location in the plant where good sanitary practices require employees to wash or sanitize and dry their hands. Such facilities shall be furnished with running water at a suitable temperature for handwashing, effective hand cleaning and sanitizing preparations, sanitary towel service or suitable drying devices and, where appropriate, easily cleanable waste receptacles;

(e) All operations in the receiving, inspecting, transporting, packaging, segregating, preparing, processing and storage of food shall be conducted in accordance with adequate sanitation principles. Overall sanitation of the plant shall be under the supervision of an individual assigned responsibility for this function. All reasonable precautions, including the following, shall be taken to assure that production procedures do not contribute contamination such as filth, harmful chemicals, undesirable microorganisms, or any other objectionable material to the processed product:

(A) Raw material and ingredients shall be inspected and segregated as necessary to insure that they are clean, wholesome, and fit for processing into human food and shall be stored under conditions that will protect against contamination and minimize deterioration. Raw materials shall be washed or cleaned as required to remove soil or other contamination;

(B) Containers and carriers of raw ingredients shall be inspected on receipt to assure that their condition has not contributed to the contamination or deterioration of the products. When ice is used in contact with food products, it shall be made from potable water and shall be used only if it has been manufactured in accordance with adequate standards and stored, transported, and handled in a sanitary manner;

(C) Food processing areas and equipment shall not be used to process animal feed or inedible products unless human food will not be contaminated thereby;

(D) Processing equipment shall be maintained in a sanitary condition through frequent cleaning, including sanitization where necessary. If necessary, equipment shall be taken apart for thorough cleaning. All food processing, including packaging and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for undesirable bacterial of other microbiological growth, toxin formation, or deterioration or contamination of the processed product or ingredients. This may require careful monitoring of such physical factors as time, temperature, humidity, pressure, flow-rate and such processing operations as freezing, dehydration, heat processing, and refrigeration to assure that mechanical breakdowns, time delays, temperature fluctuations and other factors do not contribute to the decomposition or contamination of the processed products;

(E) Chemical, microbiological, or extraneous material testing procedures shall be utilized where necessary to identify sanitation failures or food contamination, and all foods and ingredients that have become contaminated shall be rejected, treated or processed to eliminate the contamination where this may be properly accomplished;

(F) Packaging processes and materials shall not transmit contaminants or objectional substances to the products, shall conform to any applicable food additive rules, and shall provide adequate protection from contamination;

(G) Coding of products sold or otherwise distributed from a manufacturing, processing, packing or repacking activity should be utilized to enable positive lot identification so as to facilitate the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use. Records shall be retained for a period of time that exceeds the shelf life of the product, but need not be retained for more than two years.

(3) Processing Requirement for Retail Sale of Dehydrated Prunes: Dehydrated prunes shall not be sold at retail or offered or displayed for sale at retail, unless they have been subjected to heat treatment by water or steam to at least 180°F. long enough to remove adhering material and to obtain a uniform desired texture.

(4) Property Tax exemption for qualified machinery and equipment.The Oregon Department of Agriculture is authorized to certify qualified machinery and equipment for the purposes of ORS 307.453–307.457.

(5) Definitions:

(a) For the purposes of this section, the definitions in ORS chapter 307.455 apply, unless the context requires otherwise. In addition, the following definitions apply:

(A) "Newly acquired property" means new or used machinery and equipment that is first purchased or leased by a food processor not more than two years (24 months) prior to placing it into service. Leased equipment may be exempt only if the food processor is responsible for the payment of the property taxes under the terms of the lease agreement. Newly acquired property does not include refurbished or reconditioned property acquired in the time frame provided by this rule.

(B) "Placed into service" means the date the machinery and equipment is first used or in such condition that it is readily available and operational for its intended commercial use. It does not include property that is being tested or is in the process of being erected or installed on the January 1 assessment date.

(C) "Real Market Value of the Property" for the purpose of determining the late filing penalty pursuant to ORS 307.455, means the invoice cost of the machinery and equipment, installation, engineering, and miscellaneous costs including machinery process piping, foundations, power wiring, interest during installation, and freight.

(b) The process for application and determination of certification for qualified machinery and equipment is as follows:

(A) Any food processor requesting certification must make a request for certification in writing on a form provided by the Oregon Department of Agriculture. Certification request forms are available on the Oregon Department of Agriculture web site and the Oregon Department of Revenue web site, or are available by mail from either agency upon request.

(B) Upon receiving a completed certification request form, the Food Safety Division of the Oregon Department of Agriculture may schedule a visit to the processing site for the purpose of inspecting and verifying the eligibility of machinery requested for certification as qualified machinery or equipment.

(C) After inspecting the food processing equipment requested to be certified, the Oregon Department of Agriculture shall make a determination as to property that is qualified for certification. This determination of certification shall be in writing and include a schedule of all machinery or equipment the Oregon Department of Agriculture has certified.

(c) Following certification, a food processor seeking continued exemption as described at ORS 307.455 must annually verify that equipment previously certified still constitutes qualified machinery or equipment as follows:

(A) By January 30th of each year following certification a food processor must submit to the Food Safety Division of the Oregon Department of Agriculture a signed form that includes a schedule of all equipment previously certified and provides sufficient information to the Oregon Department of Agriculture such that it can determine whether previously-certified machinery or equipment continues to meet certification requirements.

(B) The Oregon Department of Agriculture may inspect any equipment or machinery previously certified for the purposes of determining continued certification pursuant to ORS 307.455.

(C) If a food processor seeks to add additional machinery or equipment not previously certified to its annual certification verification list then the food processor must apply for certification of this additional equipment pursuant to the process for certifying qualified machinery or equipment provided in these rules.

(d) Denial of certification of certain property by the Oregon Department of Agriculture is a contested case for the purpose of ORS Chapter 183.

Stat. Auth.: ORS 561 & 616
Stats. Implemented: ORS 616.700
Hist.: AD 2-1987, f. & ef. 1-30-87;.DOA 19-2005(Temp), f. 12-23-05, cert. ef. 1-3-06 thru 5-31-06

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Rule Caption: Housekeeping changes to plant quarantine regulations updating scientific names, references, email addresses, etc.
Adm. Order No.: DOA 1-2006
Filed with Sec. of State: 1-13-2006
Certified to be Effective: 1-13-06
Notice Publication Date: 12-1-05
Rules Amended: 603-052-0116, 603-052-0117, 603-052-0129, 603-052-0150, 603-052-0355, 603-052-0360, 603-052-0385, 603-052-1200, 603-052-1221
Rules Repealed: 603-052-0349
Subject: Housekeeping amendments are enacted for the following rules: 603-052-0116 (change title from Quarantine Against Peach Phytoplasma to Quarantine Against Peach Yellows Phytoplasma); 603-052-0117 (change title from Quarantine Against Peach Mosaic Virus Disease to Quarantine Against Peach Latent Mosaic Viroid, drop Arkansas from area under quarantine, add Garfield Co., Colorado); 603-052-0129 (change title from Quarantine Against Brown Garden Snail to Quarantine Against Exotic Phytophagous Snails, add to areas under quarantines "and any other state or territory where phytophagous snails are established"); 603-052-0150 (update pest management guides to 2005 editions); 603-052-0355 (delete "1945" date); 603-052-0360 (update pest management guide to 2005 edition); 603-052-0385 (update scientific names); 603-052-1200 (update noxious weed quarantine to include four weeds recently added to the state noxious weed list: yellow floating heart, garlic mustard, policeman's helmet and yellow flag iris; 603-052-1221 (update email address for notification). The following rule is repealed: 603-052-0349 (a statewide Allium white rot program, OAR 603-051-1050, is now in place making the Union co. Allium disease control area redundant).
Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0116
Quarantine; Peach Phytoplasma

(1) Establishing a Quarantine. A quarantine is established against the disease of peach known as Peach Yellows Phytoplasma.

(2) Areas under Quarantine. Alabama, Connecticut, Delaware, Florida, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Tennessee, Virginia, West Virginia, and District of Columbia.

(3) Commodities Covered:

(a) Propagating parts, except seeds, and any tree budded or grafted on understock of the following species of plum which are symptomless carriers of Peach Yellows, phytoplasma:

(A) Native American plum, Prunus hortulana and P. americana;

(B) Common or European plum, P. domestica;

(C) Japanese plum, P. salicina;

(D) Myrobalan plum, P. cerasifera;

(E) Othello plum, P. cerasifera var. atropur-purea;

(F) Wild goose plum, P. munsoniana.

(b) All trees, roots, stalks, cuttings, grafts, scions, and buds of all species and varieties of Prunus except sweet cherry, P. avium; sour cherry, P. cerasus; Portugal laurel, P. lusitanica; common cherry laurel, P. laurocerasus; holly leaved cherry, P. ilicifolia; and Catalina cherry, P. lyonii;

(c) Any tree or bud grafted on peach or plum understock.

(4) Exceptions:

(a) Seedling trees or trees budded on admissible rootstock which are grown from seed and shipped in one growing season may be certified provided any budwood used in the production of such trees meets the conditions of subsection (c) of this section and Peach Yellows disease has not occurred during the growing season either on or within one mile of the growing ground property;

(b) Certificates may be issued for reshipment of dormant host trees and propagative parts which have been produced outside the areas under

quarantine and have remained dormant while within such areas. Certificates shall state the name of the state where produced;

(c) Species and varieties other than symptom-less carriers may be shipped into this state provided they are properly labeled as to scientific name and each lot or shipment is accompanied by a state-of-origin inspection certificate certifying that the following conditions have been met:

(A) Adequate surveys have been made by state agricultural officials, at the proper time in relation to diseases and hosts, and as Peach Yellows disease has not been found during the last two growing seasons previous to digging the trees or taking the buds either on or within one mile of the growing grounds or bud source properties; and

(B) The growing premises have been free from any prohibited symptomless species of plum trees or any other tree growing on any prohibited species of plum understock and, during the last two growing seasons previous to digging the trees or taking the buds, any prohibited symptomless species of plum trees has not existed within one mile of the growing premises or bud source properties.

(5) Disposition of Commodities in Violation of Quarantine. Commodities shipped in violation of this quarantine shall be refused entry into this state and shall be immediately sent out of this state or, at his option and without expense to or indemnity paid by the Department, destroyed under departmental supervision by the person receiving the same. Violators may also be subject to civil penalties of up to $10,000 as provide by Oregon Laws 1999, Chapter 390, section2.

(6) Special Permits. This section does not apply to experimental shipments moved by, or at the request of, the United States Department of Agriculture. The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state of quarantined commodities for research purposes only. Movement of such commodities shall be subject to any conditions or restrictions stipulated in the permit.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 1041(31-74), f. 8-28-74, ef. 9-25-74; AD 1085(8-76), f. & ef. 3-11-76; AD 3-1995, f. & cert. ef. 4-5-95; DOA 6-2005, f. & cert. ef. 2-15-05; DOA 1-2006, f. & cert. ef. 1-13-06

603-052-0117
Quarantine; Peach Mosaic Virus Disease

(1) Establishing a Quarantine. A quarantine is established against Peach Latent Mosaic Viroid (formerly known as Peach Mosaic Virus Disease).

(2) Areas under Quarantine:

(a) Arizona: Entire state;

(b) California: Counties of Los Angeles, Riverside, San Bernardino, and San Diego;

(c) Colorado: Counties of Delta, Garfield, Mesa, Montezuma, and Montrose;

(d) New Mexico: Entire state;

(e) Oklahoma: Counties of Alfalfa, Bryan, Johnston, and Woods;

(f) Texas: Counties of Brown, Callahan, Camp, Cherokee, Comanche, Dallas, Eastland, El Paso, Erath, Fisher, Floyd, Freestone, Hale, Harrison, Hudspeth, Jones, Limestone, Palo Pinto, Runnels, San Saba, Smith, Tarrant, Taylor, Upshur, and Young;

(g) Utah: Counties of Grand and Washington.

(3) Commodities Covered. All peach, nectarine, apricot, almond, plum, *Prunus tomentosa* (Manchu cherry), *P. besseyi* (W. Sand Cherry) and prune trees or parts of these trees for or capable of propagation except fruit pits, are hereby declared to be hosts or possible carriers of the disease herein quarantined and are prohibited from entry into this state, either directly, indirectly, diverted, or reconsigned.

(4) Exceptions. All commodities identified in section (3) of this rule originating outside of the quarantine areas shall be accompanied by a certificate stating that all such commodities were produced in an area free of peach mosaic virus.

(5) Disposition of Commodities in Violation of Quarantine. Commodities shipped in violation of this quarantine shall be refused entry into this state and shall be immediately sent out of this state or, at his option and without expense to or indemnity paid by the Department, destroyed under departmental supervision by the person receiving the same.

(6) Special Permits. The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state of quarantined commodities for research purposes only. Movement of such commodities shall be subject to any conditions or restrictions stipulated in the permit.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 1041(31-74), f. 8-28-74, ef. 9-25-74; AD 3-1995, f. & cert. ef. 4-5-95; DOA 1-2006, f. & cert. ef. 1-13-06

603-052-0129
Quarantine; Against Exotic Phytophagous Snails

(1) Establishing Quarantine. A quarantine is established against exotic phytophagous snails that are members of the Phylum Mollusca of the Class Gastropoda characterized by a calcareous shell covering the visceral hump. This quarantine applies to exotic phytophagous snails in any stage of development, and includes, but is not limited to: brown garden snail (*Helix aspersa Muller*), white garden snail (*Theba pisana Muller*), milk snail (*Otala lactea Muller*), giant African snail (*Achatina spp*.), giant South American snail (Megalobulimus oblongus Muller), and all other exotic phytophagous snails (hereafter, “exotic phytophagous snails”). These snails are very important garden and agricultural pests causing severe damage to leaves and fruits of many plants.

(2) Areas Under Quarantine. The entire states of Arizona, California, Hawaii, New Mexico, Texas, Utah, Washington, and any other state or territory where exotic phytophagous snails are established.

(3) Covered Commodities. Exotic phytophagous snails in any stage of development. Grass sod and all plants with roots in soil and any other plant material or articles capable of transporting exotic phytophagous snails into Oregon are hereby declared to be hosts or possible carriers of the pests herein quarantined and are prohibited entry into this state directly, indirectly, diverted, or reconsigned unless there is compliance with section (4) of this rule.

(4) Conditions:

(a) Covered commodities from regulated areas may be permitted entry into Oregon only when such commodities are accompanied by a certificate of quarantine compliance issued by an authorized official from the state of origin which certifies that it has been determined by official inspection immediately prior to shipment that such covered commodities were found to be free of all life stages of exotic phytophagous snails or that such commodities originate from an area determined by official inspection to be free of exotic phytophagous snails. The original certification document shall be forwarded to the Oregon State Department of Agriculture, Plant Division, 635 Capitol St. NE, Salem, Oregon 97310, immediately by First Class mail or fax (503) 986-4786. Each lot or shipment of the covered commodities shall be accompanied by a copy of the above described certification document. The Oregon receiver to whom the commodities are shipped shall notify the department immediately upon receipt of such commodities and shall hold the same until they are released by the department.

(b) Cut greens, cut flowers and soil-free plants including bare root plants, plant crowns, roots for propagation, bulbs, corms, tubers, and rhizomes of plants washed free of adherent soil are excepted from the quarantine, if such plant materials are found upon inspection not to be infested with exotic phytophagous snails or are found not to bear soil accumulations sufficient to carry or obscure any life stage of exotic phytophagous snails.

(c) Certified and noncertified covered commodities shall not be shipped together in the same transporting vehicle, and any such mixing of certified and noncertified covered commodities shall nullify certification and result in the rejection of the entire shipment of covered commodities. Upon inspection and determination by the Oregon State Department of Agriculture that the transporting vehicle or any properly certified covered commodities are infested with any life stage of exotic phytophagous snails, such shipment shall be found in violation of this quarantine.

(5) Heliculture Prohibited. Raising, maintaining, selling, shipping and/or holding live exotic phytophagous snails within the State of Oregon is prohibited.

(6) Disposition of Commodities in Violation of the Quarantine. All covered commodities described in section (3) of this rule found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, or at the receivers option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.

(7) Exceptions. Upon request, and upon investigation and finding that unusual circumstances exist justifying such action, the department may issue a permit allowing entry into this state of covered commodities without meeting the requirements of subsection (4)(a) of this rule. However, all conditions specified in the permit shall be met before such permit will be recognized.

Stat. Auth.: ORS 561 & 570
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 14-1983, f. 11-15-83, ef. 12-1-83; AD 12-1997, f. & cert. ef 7-31-97; DOA 8-1999, f. & cert. ef. 5-14-99; DOA 1-2006, f. & cert. ef. 1-13-06

603-052-0150
Control Areas and Procedures

(1) As authorized by ORS 570.405 to 570.435, a control area is established in each of the following counties for the protection of the cherry industry in that area through the eradication or control of the cherry fruit fly:

(a) Hood River County;
(b) Lane County;
(c) Linn County;
(d) Marion County;
(e) Polk County;
(f) Umatilla County;
(g) Union County;
(h) Yamhill County; and
(i) The portion of Wasco county, north of Warm Springs Reservation.

(2) Approved IPM practices, including spray formulations, are those recommended by the Oregon State Extension Service as described for specific control areas in the following extension documents:

(a) For Hood River and Wasco counties: **2005 Pest Management Guide for Tree Fruits in the Mid-Columbia Area**. EM 8203, Oregon State University Extension Service. 2005.

(b) For Lane, Linn, Marion, Polk and Yamhill counties: 2005 Pest Management Guide for the Willamette Valley, EM 8329, Oregon State University Extension Service. 2005.

(c) For Umatilla and Union counties Cherry Fruit Fly Pest Management for control areas in Umatilla and Union counties. EM 8587, Oregon State University Extension Service. 1995.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 570
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 603, f. & ef. 10-31-58; AD 974(7-72), f. 7-27-72, ef. 8-15-72; AD 1073(19-75), f. & ef. 12-5-75; AD 11-1977, f. 5-10-77, ef. 5-20-77; DOA 4-2005, f. & cert. ef. 2-14-05; DOA 1-2006, f. & cert. ef. 1-13-06

603-052-0355
Control Area — Yellow Dwarf — Yamhill and Washington Counties

(1) A control area is established within the boundaries described in section (2) of this rule, all in Yamhill and Washington Counties, for the protection of the onion industry against the introduction into or the spread within that area of yellow dwarf disease of onions.

(2) The area is described beginning at N.W. corner of section 2, Yamhill County, extending south between sections 2 and 3, approximately 27.75 chains to north line of Bridge farmer donation land claim at the N.W. corner of L.O. Griebler (or Taylor) 63 acre farm; thence southwesterly following the westerly line of said tract approximately 41 chains; thence south 75 degrees 21 minutes east 19.11 chains; thence south 70 degrees 50 minutes east 6.49 chains; thence south 23 degrees 27 minutes west 12.90 chains to center of County Road 269, 31.75 chains to the most southerly corner of the David Bridge farmer claim; thence easterly about 40 rods to the N.E. corner of the S.E. 1/4 of the N.W. 1/4 of section 11, Township 2 S., Range 4 W; thence south approximately 22 chains to center of County Road 268; thence easterly along center of said County Road approximately 12-1/2 chains to the westerly line of the Rose Crunican 100 acre tract; thence southerly along the westerly line of said Crunican tract approximately 19 chains to the S.W. Corner of said Crunican tract; thence east approximately 11.50 chains to the N.W. corner of the Frank Phillips tract; thence south along the west line of the Frank Phillips tract 20 chains to the south line of section 11; thence east along county road 267 approximately 14 chains to the S.E. corner of section 11; thence south along a line between sections 13 and 14, approximately 35 chains to the center of the State Highway; thence southwesterly along the line of the State Highway to a line between the Kate A. Branda (or G. and M. Anderson) Farm and the C.W. McConahey (or James H. and Florence M. Jones) farm; thence east along said line about 18 chains to the center of the old County Road 273; thence northeasterly along County Road 273 approximately 3/4 mile to the intersection with Market Road No. 4; thence southeasterly following center of Market Road No. 4 about 1 mile; thence easterly still following Market Road No. 4 about 1/2 mile to intersection of County Road 116; thence north-westerly along County Road 116 about 3/4 mile to north line of section 18 being terminus of County Road 116 in Yamhill County; thence continuing northerly in sections 7 and 6, Township 2S., Range 3 W., W.M. in the center of Washington County Road No. A-28 and A-83 to the intersection of County Road A-83 with east line of section 36, Township 1 S., Range 4 W., W.M.; thence north in the center of the County Road along the east line of said section 36 to the southerly terminus of County Road 269; thence northerly in the center of County Road 269 to the N.E. corner of said section 36; thence west along the north line of said section 36 approximately 3/4 mile to its intersection with the center of the Tualatin River; thence upstream in the center of said river to the west line of section 35, Township 1 S., Range 4 W., W.M.; thence south to the N.W. corner of section 2, Township 2 S., Range 4 W., W.M., and the place of beginning.

(3) The following methods of eradication and control are declared to be the proper methods to be used in the Control Area described in section (2) of this rule, to provide for the eradication from and prevention of the introduction into that area of yellow dwarf disease of onions:

(a) No onions may be produced within the Control Area except by the planting of seed. The production of onions by the use of green plants, onion sets, or bulbs is prohibited;

(b) All onion culls and waste onions shall be destroyed in a manner or by a method that will completely prevent growth, prior to March 1, or immediately after sorting in the case of any onions sorted after that date;

(c) All onions in common storage in which Aphid are found shall be removed from the Control Area prior to April 1, and such infested storage houses and adjoining premises shall be completely cleaned of all onion bulbs following such removal. All onions in such storage in which aphis are not found prior to April 1 shall be subject to reinspection, and if Aphid are found present shall be immediately removed from the district and the houses and premises shall be thoroughly cleaned;

(d) All onions remaining in fields within the Control Area after harvest shall be destroyed prior to November 1, of the current year, and in the event any remain in the field after this cleanup, they shall be removed and destroyed prior to March 1 of the following year;

(e) All onion bulbs remaining in seed producing areas within the Control Area shall be removed and destroyed prior to November 1.

(4) Any person, firm, or corporation that violates either in whole or in part, any of the provisions of this section, upon conviction shall be subject to the penalties provided in ORS 570.990.

Stat. Auth.: ORS 570
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 204, f. 3-16-45, ef. 4-1-45: DOA 1-2006, f. & cert. ef. 1-13-06

603-052-0360
Control Area: Onion Maggot — Malheur County

(1) A control area is established within the boundaries of Malheur County for the protection of the onion industry by the eradication or control of the insect pest known as the onion maggot. This control area order is based on IPM principles first recognized and used by Malheur County growers in 1957.

(2) The following methods of eradication and control are declared to be the proper methods used in this control area order:

(a) All cull or waste onions in Malheur County shall be disposed of by a method approved by this control order prior to March 15 each year; for onions sorted after that date, the resulting cull and waste onions shall be disposed of within one week after such sorting;

(b) Disposal of cull or waste onions shall be accomplished only as set forth below:

(A) Disposal by covering in a dump site approved by the Oregon Department of Environmental Quality (DEQ). Culls and onion debris shall be dumped and covered by at least 12 inches of onion-free soil by March 15 each year;

(B) Disposal by animal feeding. Culls and onion debris shall be completely removed from feeding areas by March 15 and buried under 12 inches of onion-free soil. Onions tramped into the soil so they cannot be removed shall be plowed to a depth of 12 inches;

(C) Disposal by chopping or shredding. Chopped or shredded onion debris that is incapable of sprouting may be returned to the field at a tonnage rate no higher than the DEQ-approved rate of 80 tons per acre and plowed to a depth where no onion parts are exposed on the surface;

(D) Composting. All onion debris shall be incorporated into the compost bed and completely covered by 12 inches of onion-free soil;

(E) Disposal of residue in onion producing fields. Commercial onion fields where sort out bulbs are left at harvest shall be disked to destroy the bulbs and shall be plowed to a depth of at least 12 inches by March 15 each year. Seed bulbs shall be disposed of in the same manner following the last harvest;

(F) If inclement weather prevents plowing, the culls will be treated with an EPA-labeled insecticide currently listed in the 2005 PNW Insect Control Handbook at prescribed intervals until proper disposal occurs.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 590, f. 9-10-58, ef. 9-28-58; AD 784(8-64), f. 4-29-64, ef. 5-15-64; AD 4-1995, f. & cert. ef. 4-5-95; DOA 3-1999, f. & cert. ef. 1-29-99; DOA 1-2006, f. & cert. ef. 1-13-06

603-052-0385
Malheur County Bean Disease Control Area and Procedures

(1) As authorized by ORS 570.405 to 570.435, a control area is established for the protection of the bean seed industry in the following described area through the eradication or control of seedborne bacterial diseases, specifically: Halo Blight caused by Pseudomonas syringae pv. phaseolicola; Common Bean Blight caused by Xanthomonas campestris pv. phaseoli and Xanthomonas campestris pv. phaseoli var. fuscans; Bacterial Brown Spot caused by Pseudomonas syringae pv. syringae (only strains virulently pathogenic to Phaseolus sp.); Bacterial Wilt caused by

Curtobacterium flaccumfaciens pv. flaccumfaciens; Anthracnose caused by Colletotrichum lindemuthianum or any variations or new strains of these diseases, which are recognized as virulently pathogenic and seedborne, and/or a potential threat to seed production, all of which are hereafter referred to as diseases of beans; such control area includes all of Malheur County, Oregon.

(2) The following methods of control are declared to be the proper methods to be used in the control area described in section (1) of this rule, for the control and prevention of the introduction of diseases of beans. All bean seed, Phaseolus species, from whatever source, used for planting purposes within Malheur County are subject to the following:

(a) Bean seed grown in Malheur County for planting in Malheur County:

(A) Shall be certified in accordance with the procedures and provisions of section (3) of this rule;

(B) Shall have a Malheur County planting certificate number assigned by the Department;

(C) Shall have been Departmentally inspected or bear approved tags; and

(D) Shall have been grown and inspected for two consecutive preceding generations in Malheur County under rill irrigation prior to growing under sprinkler irrigation.

(b) Imported bean seed grown west of the Continental Divide in the contiguous states:

(A) May not be grown under sprinkler irrigation in Malheur County;

(B) Must have an approved phytosanitary certificate from the state of origin affirming freedom from the diseases listed in section (1) of this rule, based on growing season and windrow inspection, this seed may be planted in Malheur County only with the prior approval of the Department and provided that each field planted within Malheur county is submitted for Departmental inspections; and

(C) Shall successfully pass laboratory and/or greenhouse tests conducted by the Department from officially drawn samples; except

(D) Idaho grown bean seed shall be exempt from the requirements of this paragraph provided that:

(i) It has been certified for in-state planting by the Idaho Department of Agriculture;

(ii) It bears Idaho Department of Agriculture inspected or approved tags;

(iii) It is certified by the Idaho Department of Agriculture to have been grown and inspected for two consecutive preceding generations in Idaho under rill irrigation prior to planting for growing under sprinkler irrigation in Malheur County;

(iv) It has been grown in Idaho, has been inspected by the Idaho Crop Improvement Association, and been approved for planting in Idaho; and

(v) Imported bean seed grown east of the Continental Divide in the contiguous states or in foreign countries or otherwise ineligible for planting in Malheur County may be planted in Malheur County only on Departmentally approved Trial Grounds, and are subject to the provisions of section (6) of this rule.

(3) All bean fields in Malheur County shall be subject to entry and inspection by the Department. Growing season inspections of all bean fields shall be done as many times as deemed necessary by the Department, in accordance with the following:

(a) Bean fields grown for seed to be certified for planting in Malheur County shall be inspected by the Department during the growing season and in the windrow, including:

(A) Such bean fields grown under rill irrigation shall be inspected a minimum of one time during the growing season before plants mature seed, and again in the windrow;

(B) Such bean fields grown under sprinkler irrigation shall be inspected a minimum of two times during the growing season before plants mature seed, and once in the windrow; and

(C) The tolerance for the [bacterial] diseases (identified in section (1) of this rule) in any field or part thereof for seed to be certified for planting in Malheur County shall be zero.

(b) Bean crops requiring field inspections to qualify for phytosanitary certifications shall be subject to the same inspection requirements and tolerances as set forth in subsection (a) of this section;

(c) Oregon State University certification inspections may replace the Departmental inspections for certification of seed for planting in Malheur County, if appropriate growing season and windrow inspection requirements as set forth in subsection (a) of this section are met;

(d) Every grower, seed company, or handler of bean seed for planting crops to be grown in Malheur County shall submit his written request to the Department to make the inspections required under this Bean Disease Control Area Order, on or before July 1 of each year. Such written request shall include acreage, general location of field, method of irrigation, name and address and telephone number of applicant.

(4) Eradication methods used shall only be those approved by the Department, including:

(a) Any bean seed found or known to be contaminated with disease which is now within the boundaries of Malheur County shall not be planted in Malheur County;

(b) Any bean fields within the boundaries of Malheur County which show contamination of disease shall be destroyed in part or in total as may be required to eliminate the presence of disease in the field, by and at the expense of the grower, or landlord, or his authorized agents. The Department shall notify the grower, or landlord, or his authorized agents, of the method and extent of destruction and any safeguards to be taken against disease spread;

(c) The true identity of a regulated disease on growing plants or plants in the windrow will be based upon the observance of symptoms of a regulated disease and, when necessary to establish identity or pathogenicity, either laboratory or greenhouse tests to be conducted by the Department, including:

(A) The definitive verification of identity or pathogenicity shall include isolation of the suspected pathogen and inoculation of seedlings of a known susceptible host;

(B) Until verification of the suspected pathogen is completed the involved planting shall be placed under quarantine for a period of 30 days subject to review or extension as determined by the Department, and entry to the quarantined area shall be restricted to the grower, his agents, the Departmental officials, or persons authorized in writing by the Department, who shall be required to take all necessary sanitary precautions, as prescribed by the quarantine order, to safeguard against the possible spread of the suspected regulated disease; and

(C) The true identity of a regulated disease when found in or on seed shall be based on serological testing methods, the positive results of which shall be conclusive that the plants are subject to this control order, unless the owner of the seed requests verification of pathogenicity to be performed at his expense.

(d) When any regulated disease is verified by the Department, the grower or seed company shall be notified by the Department of such findings, and shall have 48 hours to view the involved planting or laboratory results prior to any action being taken by the Department.

(5) Exemption and special situations to these requirements are as follows:

(a) Any commercial or garden beans first found infected during windrow inspection, are exempt from destruction if the diseased portion of the field and an appropriate buffer area (not less than a 50-foot radius) surrounding the infected site are promptly destroyed;

(b) Beans for processing or fresh consumption are exempt from destruction if the diseased portion of the field is destroyed or harvested within five days after first detection or laboratory verification of the disease, and the crop residue is promptly and completely plowed under after harvest;

(6) Trial Grounds are defined as parcels of land approved by the Department to be set aside for research, testing, or increase of: bean seed grown on Trial Grounds in Malheur County during previous seasons; bean seed eligible for planting in Malheur County; or bean seed otherwise ineligible for planting within the Malheur County. Trial Grounds shall be utilized in accordance with the following:

(a) They shall be under the supervision of technically trained personnel approved by the Department;

(b) The land upon which they are situated shall be owned or leased by the grower and, if leased, a copy of the lease shall accompany the application for approval;

(c) Applications for approval shall be submitted to the Department prior to May 20 of any year and shall contain:

(A) The name of supervisor in charge;

(B) The location and size of the Trial Ground; and

(C) A detailed varietal planting plan (if the original planting plan is changed, the Department shall be notified).

(d) An applicant may have more than one Trial Ground approved, provided a separate application is submitted for each Trial Ground and provided it meets the requirements of this section;

(e) Any seed grown on Trial Grounds to be released to farmer growers for replanting within Malheur County or requiring phytosanitary certification shall meet the inspection requirements of section (3) of this rule;

(f) All information submitted with the approval applications shall be deemed to be confidential under ORS 192.500(1)(b) and (c);

(g) Experimental Plots are defined as subdivision areas within Trial Grounds used for the introduction of imported seed otherwise ineligible for planting in Malheur County. A maximum of one pound of bean seed per

variety may be planted in an Experimental Plot with no restrictions, except as noted in this section;

(h) Observation Plots are defined as subdivision areas within Trial Grounds used for the introduction, testing, and observation of imported seed otherwise ineligible for planting in Malheur County. A maximum of ten pounds of bean seed per variety may be planted in an Observation Plot. Bean seed for Observation Plot planting shall pass laboratory or greenhouse tests conducted by the Department on official or submitted samples prior to planting;

(i) Increase Plots are defined as subdivision areas within Trial Grounds used for the introduction or increase of imported bean seed grown east of the Continental Divide or in foreign countries, imported bean seed from west of the Continental Divide not meeting the requirements of section (2) of this rule, any bean seed previously grown in Malheur County, or any bean seed eligible for planting in Malheur County. A maximum of five acres per variety in any given year may be planted in an Increase Plot. Imported seed shall have successfully passed laboratory or greenhouse testing conducted by the Department from official samples prior to planting. Only one Increase Plot may be maintained by a holder of more than one approved Trial Ground;

(j) Trial Grounds shall be subject to the following restrictions and inspection procedures:

(A) All machinery used in production of bean seed on Trial Grounds shall be disinfected to the satisfaction of the Department prior to the movement to other bean field;

(B) There shall be a minimum of four growing seasons and one windrow inspection, by the Department, for which the fees and charges will be $7.50 per acre (or fraction thereof) per inspection of seed from east of the Continental Divide or foreign countries; and $2 per acre (or fraction thereof) per inspection of seed from west of the Continental Divide; and

(C) If disease is found on Trial Ground, none of the seed produced on that Trial Ground may be certified but shall under go one additional year of Trial Ground growing to assure that contamination did not occur.

Stat. Auth.: ORS 561 & 570
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 5-1978, f. 5-17-78, ef. 6-10-78; DOA 9-2005, f. & cert. ef. 2-15-05; DOA 1-2006, f. & cert. ef. 1-13-06

603-052-1200
Quarantine; Noxious Weeds

(1) Establishing Quarantine. A quarantine is established against the noxious weeds listed herein. Noxious weeds have become so thoroughly established and are spreading so rapidly that they have been declared a menace to the public welfare. ORS 570.505.

(2) Areas Under Quarantine. The entire state of Oregon and all other States of the United States and all foreign countries.

(3) Covered Plants. For purposes of this rule the term "plants" applies to whole plants, plant parts, and seeds. This rule applies to all "A" and "B" designated noxious weeds listed herein, except as provided in subsections (c) and (d). Plants on the Federal Noxious Weed List (7 C.F.R. 360.200) are also covered by this rule, with the exception of Japanese blood grass, Imperata cylindrica, var. Red Baron and Chinese water spinach, Ipomoea aquatica.

(a) "A" designated weeds. Weeds of known economic importance which occur in the state in small enough infestations to make eradication/containment possible; or which are not known to occur, but their presence in neighboring states makes future occurrence in Oregon seem imminent.

(A) African rue — *Peganum harmala*;
(B) Camelthorn — *Alhagi pseudalhagi*;
(C) Coltsfoot — *Tussilago farfara*;
(D) Cordgrasses:
(i) Common — *Spartina anglica*;
(ii) Dense-flowered — *Spartina densiflora*;
(iii) Saltmeadow — *Spartina patens*;
(iv) Smooth — *Spartina alterniflora*.
(E) European water chestnut — *Trapa natans*;
(F) Giant hogweed — *Heracleum mantegazzianum*;
(G) Goatgrasses:
(i) Barbed — *Aegilops triuncialis*;
(ii) Ovate — *Aegilops ovata*.
(H) Hawkweeds:
(i) King-devil — *Hieracium piloselloides*;
(ii) Meadow — *Hieracium pratense*;
(iii) Mouse-ear — *Hieracium pilosella;*
(iv) Orange — *Hieracium aurantiacum*;
(v) Yellow — *Hieracium floribundum*.
(I) Hydrilla — *Hydrilla verticillata*;
(J) Kudzu — *Pueraria lobata*;
(K) Matgrass — *Nardus stricta*;
(L) Paterson's curse — *Echium plantagineum*;
(M) Purple nutsedge — *Cyperus rotundus*;
(N) Silverleaf nightshade — *Solanum elaeagnifolium*;
(O) Skeletonleaf bursage — *Ambrosia tomentosa*;
(P) Squarrose knapweed — *Centaurea virgata*;
(Q) Starthistles:
(i) Iberian — *Centaurea iberica*;
(ii) Purple — *Centaurea calcitrapa*.
(R) Syrian bean-caper — *Zygophyllum fabago*;
(S) Texas blueweed — *Helianthus ciliaris*;
(T) Thistles:
(i) Plumeless — *Carduus acanthoides*;
(ii) Smooth distaff — *Carthamus baeticus*;
(iii) Woolly distaff — *Carthamus lanatus*.
(U) Yellow floating heart — *Nymphoides peltata*.

(b) "B" designated weeds. Weeds of economic importance which are regionally abundant, but which may have limited distribution in some counties.

(A) Austrian peaweed (Swainsonpea) — *Sphaerophysa salsula*;
(B) Bearded creeper (common crupina) — *Crupina vulgaris*;
(C) Biddy-biddy — *Acaena novae-zelandiae*;
(D) Brooms:
(i) French — *Genista monspessulana*;
(ii) Portuguese — *Cytisus striatus*;
(iii) Scotch — *Cytisus scoparius*;
(iv) Spanish — *Spartium junceum*;
(E) Buffalobur — *Solanum rostratum*;
(F) Butterfly bush — *Buddleja davidii** (*except named horticultural varieties);
(G) Common bugloss — *Anchusa officinalis*;
(H) Creeping yellow cress — *Rorippa sylvestris*;
(I) Cutleaf teasel — *Dipsacus laciniatus*;
(J) Dodder — *Cuscuta spp*.* (*except northwest natives);
(K) Dyers woad — *Isatis tinctoria*;
(L) English ivy — *Hedera helix** (*except named horticultural varieties);
(M) Eurasian watermilfoil — *Myriophyllum spicatum*;
(N) False brome — *Brachypodium sylvaticum*;
(O) Field bindweed — *Convolvulus arvensis*;
(P) Garlic Mustard — *Alliaria petiolata*;
(Q) Giant horsetail — *Equisetum telmateia*;
(R) Gorse — *Ulex europaeus*;
(S) Halogeton — *Halogeton glomeratus*;
(T) Himalayan blackberry — *Rubus discolor** (R. aremeniacus & R. procerus) (*except fruit for consumption);
(U) Houndstongue — *Cynoglossum officinale*;
(V) Johnsongrass — *Sorghum halepense*;
(W) Jointed goatgrass — *Aegilops cylindrical*;
(X) Knapweeds:
(i) Diffuse — *Centaurea diffusa*;
(ii) Meadow — *Centaurea pratensis* (jacea x nigra);
(iii) Russian — *Acroptilon repens*;
(iv) Short-fringed — *Centaurea nigrescens*;
(v) Spotted — *Centaurea maculosa* (C. stoebe).
(Y) Knotweeds:
(i) Giant — *Polygonum sachalinense*;
(ii) Himalayan — *Polygonum polystachyum*;
(iii) Japanese (fleece flower) — *Polygonum cuspidatum* (Fallopia japonica).
(Z) Kochia — *Kochia scoparia*;
(AA) Mediterranean sage — *Salvia aethiopis*;
(BB) Medusahead rye — *Taeniatherum caput-medusae*;
(CC) Old man's beard — *Clematis vitalba*;
(DD) Perennial pepperweed — *Lepidium latifolium*;
(EE) Poison hemlock — *Conium maculatum*;
(FF) Policeman's helmet – *Impatiens glandulifera*;
(GG) Puncturevine — *Tribulus terrestris*;
(HH) Purple loosestrife — *Lythrum salicaria*;
(II) Quackgrass — *Agropyron repens*;
(JJ) Ragweed — *Ambrosia artemisiifolia*;
(KK) Rush skeletonweed — *Chondrilla juncea*;
(LL) Saltcedar — *Tamarix ramosissima*;
(MM) Small broomrape — *Orobanche minor*;
(NN) South American waterweed (Elodea) — *Egeria* (Elodea) densa;
(OO) Spikeweed — *Hemizonia pungens*;
(PP) Spiny cocklebur — *Xanthium spinosum*;

(QQ) Spurges:
(i) Leafy – *Euphorbia esula*;
(ii) Myrtle – *Euphorbia myrsinites*.
(RR) Sulfur cinquefoil — *Potentilla recta*;
(SS) Tansy ragwort — *Senecio jacobaea*;
(TT) Thistles:
(i) Bull — *Cirsium vulgare*;
(ii) Canada — *Cirsium arvense*;
(iii) Italian — *Carduus pycnocephalus*;
(iv) Musk — *Carduus nutans*;
(v) Scotch — *Onopordum acanthium*;
(vi) Slender-flowered — *Carduus tenuiflorus*.
(UU) Toadflax:
(i) Dalmation — *Linaria dalmatica*;
(ii) Yellow — *Linaria vulgaris*.
(WW) Velvetleaf — *Abutilon theophrasti*;
(XX) Whitetops:
(i) Hairy — *Lepidium pubescens*;
(ii) Lens-podded — *Lepidium chalepensis*;
(iii) Whitetop (hoary cress) — *Lepidium draba*.
(YY) Wild proso millet — *Panicum miliaceum*;
(ZZ) Yellow flag iris – I*ris pseudacorus*;
(AAA) Yellow nutsedge — *Cyperus esculentus*;
(BBB) Yellow starthistle — *Centaurea solstitialis*;

(c) Agricultural seed as defined in Oregon's Seed Law, ORS 633.511 to 633.750, is exempt from this quarantine but subject to the noxious weed seed tolerances in OAR 603-056-0205.

(d) Other commodities such as but not limited to wheat are exempt from this quarantine to the extent that they are contaminated with noxious weed seed.

(4) Prohibited and Permitted Acts.

(a) All plants covered in section (3) of this rule are prohibited entry into the State of Oregon.

(b) All plants listed in section (3) of this rule are prohibited from transport, purchase, sale or offering for sale in the State of Oregon.

(c) All plants listed in section (3) of this rule are prohibited from being propagated in the State of Oregon.

(d) All plants listed in section (3) may be collected from the wild in areas that are already infested with the specific species that is collected, provided that the plants, plant parts, or seed are not used for propagation or sale within the State of Oregon.

(5) Disposition of Plants in Violation of the Quarantine. All covered plants listed in section (3) of this rule are found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, if from out of state, or at the owner's option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.

(6) Exceptions. The director may issue a permit allowing entry into this state, propagation, or selling of plants covered by this rule, upon request, and upon investigation and finding that unusual circumstances exist justifying such action, and that the benefits of granting the permit outweigh the potential harm that may result from the requested action. The director may impose specific conditions on any permit issued hereunder, and the permit may be canceled for failure to meet the conditions therein. Any permit issued under this section shall be for a limited duration not to exceed one year.

Stat. Auth.: ORS 561.020, 561.190, 561.510 & 570.305
Stats. Implemented: ORS 561.510
Hist.: DOA 5-1999, f. & cert. ef. 4-5-99; DOA 13-2000, f. & cert. ef. 5-8-00; DOA 7-2002, f. & cert. ef. 2-1-02; DOA 26-2002, f. & cert. ef. 12-10-02; DOA 27-2004, f. & cert. ef. 12-28-04; DOA 1-2006, f. & cert. ef. 1-13-06

603-052-1221
Quarantine; Glassy-Winged Sharpshooter

(1) Establishing a Quarantine. A quarantine is established against glassy-winged sharpshooter, *Hoalodisca coagulata*. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon's agricultural industries from the artificial spread of glassy-winged sharpshooter. Glassy-winged sharpshooter is a vector of Pierce's disease, *Xylella fastidiosa*, in grapes and other diseases of important horticultural plants. Neither glassy-winged sharpshooter nor *X. fastidiosa* are known to be established in Oregon. Introduction of glassy-winged sharpshooter could result in serious damage to vineyards in Oregon and cause trade restrictions on many other host plants.

(2) Area under Quarantine: Mexico; the entire States of Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, and Texas; and any other state found to be infested with glassy-winged sharpshooter during the life of this quarantine. In Oregon, any property where glassy-winged sharpshooter is found.

(3) Commodities Covered: All plants referenced in Appendix A. This does not include cut flowers, cut foliage, leafless budwood, grafting wood, or dormant, leafless nursery stock except all types of propagative material of grape plants (*Vitis spp*.) (see (4) (c) below). All life stages of the glassy-winged sharpshooter, including eggs, nymphs, and adults, and Xylella fastidiosa.

(4) Provisions of the Quarantine: All shipments of covered commodities from areas under quarantine outside the state of Oregon are prohibited unless they meet the conditions below:

(a) Covered commodities, except grape plants (*Vitis spp*.), from non-infested counties in California (see (b) below) are exempt from provisions of this quarantine.

(b) Covered commodities originating from the area under quarantine including infested counties in California: Fresno, Kern, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, Santa Barbara, Tulare, Ventura, and any other county found to be infested with glassy-winged sharpshooter during the life of this quarantine, must meet either (i) or (ii) below. Note: an infestation is defined as an established, reproducing population as evidenced by positive trap catches or sightings over more than one generation of the glassy-winged sharpshooter or more than one life stage of the glassy-winged sharpshooter found on plants not including regulatory interceptions on recently imported plants.

(i) Originate from nurseries under compliance agreement with the state of origin Department of Agriculture requiring adherence to specific protocols to ensure that shipped host nursery stock is free of glassy-winged sharpshooter; or

(ii) Have been treated with a registered pesticide effective at killing all stages of glassy-winged sharpshooter prior to shipment as near to the time of shipping as is reasonably possible. A phytosanitary certificate or certificate of quarantine compliance must accompany the shipment with one of the following additional declarations: "All glassy-winged sharpshooter host plants in this shipment have been grown in a nursery under compliance agreement with the [fill in state] Department of Agriculture to ensure freedom from glassy-winged sharpshooter," or "All glassy-winged sharpshooter host plants in this shipment have been treated with [fill in name and rate of pesticide] for glassy-winged sharpshooter."

(c) Grape plants (*Vitis spp*.) from the area under quarantine, including the entire state of California, must be treated for glassy-winged sharpshooter as in (4)(b)(i) or (ii) above and must be tested and found free of Xylella fastidiosa (see procedures in(4)(c)(i) to (vii) below). A phytosanitary certificate must accompany the shipment with one of the following additional declarations: "Grape plants (*Vitis spp*.) in this shipment have been treated for glassy-winged sharpshooter with [fill in name and rate of pesticide] and a representative sample of [fill in number tested] has been tested and found free of *Xylella fastidiosa*," or "Grape plants (*Vitis spp*.) in this shipment have been grown under a compliance agreement with the [fill in state] Department of Agriculture to ensure freedom from glassy-winged sharpshooter and a representative sample of [fill in number tested] has been tested and found free of *Xylella fastidiosa*." Grape Vine Sampling and Analysis Procedure for *Xylella fastidiosa*:

(i) Samples shall be taken from plants located in lots identified for shipment to Oregon.

(ii) Samples from up to five individual plants may be combined (bulked) for analysis purposes.

(iii) Samples shall be composed of petiole and/or midrib tissue.

(iv) Analysis of samples for *X. fastidiosa* shall be done using ELISA or PCR testing by a laboratory operated by an official state or federal regulatory agency or by an approved cooperator.

(v) Sampling and analysis of non-dormant (green) plant material must take place within 60 days before the date of shipment of the plants into Oregon. Sampling and analysis of plants to be shipped dormant must take place prior to leaf drop, but within 60 days of leaf drop during the previous season.

(vi) Sampling and analysis of plant material shall be under the direct supervision of state or county regulatory officials

(vii) The following table should be used for determining the number of samples required for laboratory testing of grape plants for *Xylella fastidiosa*: (Table not included. See Ed. Note.)

(d) Notification of regulated commodity shipment is required. The shipper shall mail, FAX or e-mail documents including the phytosanitary certificate or certificate of quarantine compliance, listing the type and quantity of plants, address of shipper, address of recipient, test results if required in (4)(c) above, and contact phone numbers to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301; FAX: 503/986-4786; e-mail: quarantine @oda.state.or.us. The Department may require that shipments be held until inspected and released.

(e) Sites within Oregon where glassy-winged sharpshooter is found associated with covered commodities imported from the area under quarantine must be treated with a registered pesticide effective at killing all stages of glassy-winged sharpshooter. All imported host material received from areas under quarantine must be treated as well as all other host material in a reasonable buffer zone approved by the Oregon Department of Agriculture. Host material within the spray block may not be moved or sold until after it is treated. In cases where spray blocks include more than one owner, each owner will be responsible for spraying host material on their own property.

(5) Violation of quarantine. Violation of this quarantine may result in a fine, if convicted, of not less than $500 nor more than $5,000, as provided by ORS 561.990(4). Violators may also be subject to civil penalties of up to $10,000 as provided by Oregon Laws 1999, chapter 390, section 2; nursery license suspension or nursery license revocation. Commodities shipped in violation of this quarantine may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the State.

(6) Review of this Quarantine: The necessity for this quarantine and its effectiveness will be reviewed by the department and other interested parties in 2003. [Appendix not included. See Ed. Note.]

[ED. NOTE: Tables and Appendices referenced are available from the agency.]
Stat. Auth.: ORS 561.190, 561.510 & 561.540
Stats. Implemented: ORS 570.305
Hist.: DOA 35-2000 f. & cert. ef. 12-15-00; DOA 1-2006, f. & cert. ef. 1-13-06

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Department of Agriculture, Oregon Bartlett Pear Commission Chapter 606

Adm. Order No.: OBPC 2-2005
Filed with Sec. of State: 12-23-2005
Certified to be Effective: 12-23-05
Notice Publication Date: 10-1-05
Rules Amended: 606-010-0015
Subject: The Oregon Bartlett industry is reducing assessments through the state commission to zero, as all pear assessments are now collected through a federal marketing order. The federal marketing order is preferred as the pear industry in Oregon and Washington works together to collect assessments and market pears from the Northwest.
Rules Coordinator: Linda Bailey —(503) 652-9720

606-010-0015
Assessments

(1) As authorized or required by ORS 576.325 and 576.335, any person who is a first purchaser (or who otherwise is required to pay an assessment to the Oregon Bartlett Pear Commission) for all purchases made on or after August 1, 2005, shall deduct and withhold an assessment of: $.00 per standard box for fresh, and $.00 per processing ton net paid weight from the price paid to the producer thereof for Bartlett pears grown in Oregon. The determination for the utilization and the assessment of Bartlett pears for either the fresh or processing market shall be made at shipping point. (See definition of “First Purchaser”.)

(2) All casual sales of Bartlett pears shall be exempt from the assessment. (See definition of “Casual Sale”.)

(3) Bartlett pears in any form donated to charitable institutions are exempt from the assessment.

Stat. Auth.: ORS 576.305(12) & 576.325
Stats. Implemented: ORS 576.305 & 576.325
Hist.: BP 1, f. 8-17-65, ef. 8-18-65; BP 3, f. 7-18-73, ef. 8-1-73; BP 5, f. & ef. 8-10-76; BP 6(Temp), f. & ef. 8-11-77; BP 7, f. & ef. 9-6-77; BP 1-1979, f. & ef. 8-3-79; BP 2-1980, f. & ef. 7-30-80; BP 1-1981, f. & ef. 7-31-81; BP 1-1982, f. & ef. 7-26-82; BP 1-1983, f. & ef. 7-21-83; BP 2-1984, f. & ef. 8-6-84; BP 1-1985, f. & ef. 7-26-85; BP 1-1986, f. & ef. 7-28-86; BP 2-1987, f. & ef. 7-27-87; BP 1-1993, f. & cert. ef. 8-23-93; BP 1-1994, f. & cert. ef. 8-4-94; BP 1-1996, f. & cert. ef. 7-25-96; BP 1-1997, f. & cert. ef. 7-25-97; OBPC 1-1998, f. & cert. ef. 7-29-98; OBPC 1-2003, f. & cert. ef. 8-5-03; OBPC 2-2005, f. & cert. ef. 12-23-05

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

Adm. Order No.: BCD 27-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Adopted: 918-261-0025
Subject: This rulemaking creates an exemption from the licensing and permitting requirements for individuals who install limited energy underground signaling circuits or loops into roadways. In certain circumstances “splicing” or “connecting” signaling circuits or loops may still require a license and permit.
Rules Coordinator: Nicole M. Jantz—(503) 373-0226

918-261-0025
Exemption for Limited Energy Underground Signaling Circuits

(1) A license and permit is not required to install limited energy underground signaling circuits or loops defined in this rule. Unlicensed individuals are allowed to install underground signaling circuits or loops, and cover these circuits or loops without a permit or inspection.

(2) For purposes of this rule “underground signaling circuits or loops” means Class 2 circuits defined in Article 725 of the Electrical Specialty Code intended for use as traffic signal devices, gate controllers, weigh stations, counters or other similar devices.

(3) A license and permit is required to splice, connect, or extend the signaling circuits, loops, or loop conductor, or to connect to any of the following:

(a) Controller;

(b) Control devices;

(c) Underground wiring; or

(d) Conduit outside the roadway surface.

Stat. Auth.: ORS 479.740
Stats. Implemented: ORS 479.540
Hist.: BCD 27-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: BCD 28-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 918-525-0310, 918-525-0410, 918-525-0420
Subject: This rulemaking implements House Bill 2352, passed during the 2005 Legislative Session, which eliminates the unnecessary state inspection of used recreational vehicles (“RV”). Under these rules, new RV’s remain regulated to ensure compliance with national construction standards. The Division maintains authority to monitor RV dealers’ sales and inventory.
Rules Coordinator: Nicole M. Jantz—(503) 373-0226

918-525-0310
Required Inspections

(1) Any person manufacturing, selling, renting, leasing, or offering for sale, rent or lease any recreational vehicle within the State of Oregon must request that the Division perform an inspection and attach an Oregon insignia of compliance if any of the following conditions exist:

(a) A newly manufactured recreational vehiclewhich does not bear an Oregon insignia of compliance;

(b) The recreational vehicle bears an Oregon insignia of compliance, but has been subject to an alteration, conversion, or repair;

(c) The recreational vehicle has left the manufacturer’s, distributor’s or dealer’s facility with a “Notice of Violation” or “Red Tag”; or

(d) An in-plant inspection or dealer lot report indicates violations have not been corrected through the normal inspection process.

(2) The Division is not obligated to provide recreational vehicle inspections when the recreational vehicles are:

(a) Previously lawfully registered and titled by any state department of motor vehicles within the United States;

(b) Previously issued an ownership document by the Division, under ORS 446.571, or recorded in the deed records of a county, under ORS 446.626;

(c) Exempt from registration, title, or ownership document requirements because of United States government ownership;

(d) Manufactured in Oregon, but designated by the manufacturer as an out-of-state delivery, and delivered by the manufacturer or its agent to a purchaser in another state;

(e) Manufactured out-of-state, and not destined for an Oregon purchaser, but may be passing through Oregon to its out-of-state destination;

(f) Inspected by certified manufacturers at the manufacturing facilities; or

(g) Inspected by certified quality assurance technicians at the times and places of the alterations, repairs, or conversions.

(4) Any person installing a park trailer over 8-1/2 feet wide in the travel mode or an earthquake-resistant bracing system on a park trailer must request an inspection by the authority having jurisdiction.

(5) Any person constructing or installing an accessory building or accessory structure must request all required inspections from the authority having jurisdiction.

(6) Division Inspection fees are as provided in OAR 918-525-0510.

Stat. Auth.: ORS 446.160
Stats. Implemented: ORS 446.160, 2005 OL, Ch. 89
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 28-2005, f. 12-30-05, c ert. ef. 1-1-06

918-525-0410
Procedure for Attaching Insignia

(1) An Oregon insignia of compliance must be securely attached to a specific recreational vehicle in the following manner:

(a) When a recreational vehicle is manufactured, the division, or a certified manufacturer, must attach the Oregon insignia of compliance to the outside surface of the exterior wall near the main entrance door, and placed 12 to 36 inches above the finished floor line; or

(b) When a recreational vehicle is altered, repaired, or converted, the division, or a certified quality assurance technician, must attach the Oregon insignia of compliancein an accessible location on or near the alteration, repair or conversion.

(2) Oregon insignias of compliance may only be attached to recreational vehicles by a Division inspector, a certified quality assurance technician at the time and place of alteration, repair or conversion, or a certified manufacturer at the manufacturing facility, or elsewhere if approved by the Division.

(3) Park trailer vehicles greater than 320 square feet, but less than 400 square feet, may be dual labeled by the manufacturer as both a park trailer recreational vehicle, and a manufactured home if the manufacturer meets all the requirements of OAR chapter 918, divisions 500 and 525. Where the requirements for park trailer recreational vehicles and manufactured homes are different, the more stringent of the two requirements apply.

Stat. Auth.: ORS 446.160
Stats. Implemented: ORS 446.160
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 28-2005, f. 12-30-05, c ert. ef. 1-1-06

918-525-0420
Enforcement Actions for Non-Compliance

(1) Oregon insignias of compliance are non-transferable.

(2) Oregon insignias of compliance remain the property of the division, and may be withdrawn from a manufacturer, distributor, dealer, converter, installer, or any individual or business for any violation of these rules, or rules adopted by the division:

(3) Oregon insignias of compliance and repair operation insignias are not interchangeable.

Stat. Auth.: ORS 446.160
Stats. Implemented: ORS 446.160
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 28-2005, f. 12-30-05, c ert. ef. 1-1-06

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Adm. Order No.: BCD 29-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 918-305-0030, 918-305-0110, 918-305-0120, 918-305-0130, 918-305-0150, 918-305-0160, 918-305-0180
Subject: This proposed rule clarifies Raceway construction requirements for SR-1 Occupancies, under the Oregon Electrical Specialty Code and corrects typographical and code reference errors in the Oregon amendments.
Rules Coordinator: Nicole M. Jantz—(503) 373-0226

918-305-0030
Other Codes or Publications that Impact Electrical Installations

The responsibility for complying with all applicable requirements rests with the permit holder. Examples are listed below:

(1) Chapter 9 of the **Oregon Structural Specialty Code** (OSSC) as adopted in OAR chapter 918, division 460 relating to fire protection systems and Chapter 3 of the Oregon Residential Specialty Code as adopted in OAR chapter 918, division 480 relating to smoke alarm installations.

(2) ORS 455.420 requiring individual electric meters for dwelling units.

(3) Chapter 13 of the **Oregon Structural Specialty Code** as adopted in OAR chapter 918, division 460 which addresses the energy efficiency issues of motors, electric lighting and other electric equipment; and

(4) Chapter 16 and 17 of the **Oregon Structural Specialty Code** as adopted in OAR chapter 918, division 460 which addresses the seismic requirements of nonstructural components and special inspection requirements.

(5) Publications and requirements of the serving utility.

(6) Public Law 101-336, the Americans with Disabilities Act, Part III; Department of Justice Regulations of Friday, July 26, 1991; 28 CFR Part 36, as amended January 1, 1995, including Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Public Law 100-430, the Fair Housing Act and the regulations adopted thereunder.

(7) Chapter 11 of the **Oregon Structural Specialty Code** which relates to the Americans with Disabilities Act for mounting height requirements for electrical and communication receptacles located in affected buildings and structures.

(8) The interconnection of all net-metering facilities and solar photovoltaic systems operated as interconnected power production sources shall comply with the **Oregon Electrical Specialty Code** as adopted in OAR 918-305-0100. In addition, the interconnection of all net-metering facilities utilizing solid-state inverters and up to 25 kW peak generating capacity shall comply with the requirements of the Institute of Electrical and Electronic Engineers (IEEE) Recommended Practice P929-2000. The interconnection of all net-metering facilities utilizing solid-state inverters shall use inverters listed in accordance with Underwriters Laboratories Standard 1741-2005 (UL 1741).

(9) **Oregon Manufactured Dwelling and Park Specialty Code** as adopted in OAR chapter 918, division-500. The electrical installations shall be in accordance with the requirements of the **Oregon Electrical Specialty Code**.

(10) The electrical portions of the installation or product standards identified in OAR 918-306-0005. These standards are informational only and are to be used to clarify code intent. They may be used as installation guides when not specifically referenced or covered in the **Oregon Electrical Specialty Code**. Examples include, but are not limited to, the electrical sections of NFPA 20, NFPA 99, NFPA 101, NFPA 110 and NFPA 820.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730 & 757.262
Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0610; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0020; BCD 1-2000, f. 1-6-00, cert. ef 4-1-00; BCD 12-2000, f. 6-3-00, cert. ef. 7-1-00; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06

918-305-0110
Amend Article 100 — Definitions

(1) Replace the definitions of “Building”, “Labeled” and “Listed” in Article 100, with the definitions of “Building”, “Labeled” and “Listed” in OAR 918-251-0090.

(2) Replace the definition of “Dwelling, Multifamily” in Article 100, with the definition of “Multifamily Dwelling” in ORS 479.530.

(3) Amend Article 100 by adding the definition for “Certified electrical product” means an electrical product that is certified under ORS 479.760 and is not de-certified.

(4) Amend Article 100 by adding the definition for “Fire protection system” means approved devices, equipment and systems or combinations of systems used to detect a fire, activate an alarm, extinguish a fire, control or manage smoke and products of a fire or any combination thereof.

Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 1-2000, f. 1-6-00, cert. ef 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06

918-305-0120
Amend Article 110 — Requirements for Electrical Installations

(1) Insert the following after Section 110.8:

(a) For the purpose of this article, “schools” are buildings used for education purposes, excluding administrative offices, dormitories or detached utility buildings not used for education or training.

(b) Raceway systems, type MI, MC and AC cable or manufactured metallic wiring assemblies shall be the wiring method in the following:

(A) Schools, universities, colleges, child care centers[,]and correctional facilities as defined by the Oregon Structural Specialty Code;

(B) Hospitals as defined in NEC Article 517;and

(C) Group I-2 Occupancies and Group E Occupancies as defined in Chapter 3 of the adopted Oregon Structural Specialty Code; and

(D) SR Occupancies classified as SR 2 as defined in Appendix SR of the adopted Oregon Structural Specialty Code.

(2) The requirements of subsection (1) (b) of this rule do not apply to:

(a) Spaces in a retail center used for adult training or educational purposes;

(b) SR Occupancies classified as SR 1, SR 3 or SR 4 as defined in Appendix SR or R occupancies classified in Chapter 3 of the adopted Oregon Structural Specialty Code;

(c) Foster homes providing family-type care only;

(d) Class 2 and 3 systems installed in conformity with Articles 725, 727, 760, 770, 780 and Chapter 8 of the **2005 National Electrical Code**; and

(e) Power limited fire protection alarm systems.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0620; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0030; BCD 1-2000, f. 1-6-00, cert. ef 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06

918-305-0130
Amend Article 210 — Branch Circuits

(1) Amend Section 210.8 Ground-Fault Circuit-Interrupter Protection for Personnel by inserting the following after Section 210.8(A)(2) Exception No. 2: "Exception No. 3: Receptacle ground fault protection shall not be required for a dedicated branch circuit serving a single receptacle for sewage or sump pumps." Amend Section 210.8(A)(5) by inserting the following after exception No. 3: "Exception No. (4) to (5) Receptacle ground fault protection shall not be required for a dedicated branch circuit serving a single receptacle for sewage or sump pumps."

(2) Amend Section 210.8 Ground-Fault Circuit-Interrupter Protection for Personnel by inserting the following after Section 210.8(A)(7) "Exception No. 1: A single receptacle or a duplex receptacle for one or two appliances located within dedicated space for each appliance that, in normal use, is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(7), or (A)(8)."

Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 15-2001(Temp), f. & cert. ef. 11-26-01 thru 5-24-02; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06

918-305-0150
Amend Article 230 — Services

(1) Amend Section 230.40 Number of Service-Entrance Conductor Sets, Exception No. 3 by adding: "when there are continuous metallic paths bonded to the grounding system in the buildings involved, a disconnect, a separate grounded conductor and equipment grounding conductor shall be installed to meet the provisions of Article 225."

(2) Amend Section 230.43 Wiring Methods for 600 Volts, Nominal, or Less by adding the following to the end of the first paragraph: "Exception: Items (13) and (15) are limited to traffic control devices and highway lighting poles."

(3) Amend Section 230.70(A)(1), Readily Accessible Location by adding an exception: "Exception: In existing installations where only the service panel or meter base is changed and the existing service conductors meet the ampacity requirements, or the existing conduit is of sufficient size to install new conductors, the panel may remain at the present location providing all requirements of Sections 110.26 and 240.24 are met. This exception does not require a main disconnect located nearest the point of entry."

(4) Amend Section 230.95(C) Performance Testing to read: "The ground-fault protection system shall be performance tested when first installed on the site. The test shall be conducted in accordance with instructions provided with the equipment. This test shall be performed by persons having proper training and experience required to perform and evaluate the results of such performance testing. A written record of this test shall be made available to the authority having jurisdiction. This report shall be signed by the person(s) performing this test."

Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: DC 13-1987, f. & ef. 5-1-87; BCA 13-1989, f. & cert. ef. 5-24-89; Renumbered from 814-022-0630; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0040; BCD 1-2000, f. 1-6-00, cert. ef 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06

918-305-0160
Amend Article 250 — Grounding

The following provisions of Article 250 are amended:

(1) Section 250.24(A) — System Grounding Connections. Insert the following after Section 250.24(A)(1): "Exception: When the electric utility has installed a ground fault protection system ahead of the customer's service equipment, no bonding or electrical connection from the grounding electrode system shall be made to the grounded service conductor on the load side of the utility ground fault sensing device. The neutral or grounded service conductor, however, shall be grounded on the line side of the first ground fault sensor in a manner otherwise required at the customer's service equipment. The grounding electrode conductor shall be run to an equipment grounding bus or terminal at the service equipment as long as the equipment grounding conductor and the grounded neutral conductor are not connected to each other at this point. The on-site ground fault test required by Section 230.95 shall not be performed prior to the above installation requirements. Warning signs shall be installed."

(2) Section 250.24(B) — Main Bonding Jumper. Insert the following after Section 250.24(B) Exception No. 2: "Exception No. 3. When the electric utility has installed a ground fault protection system ahead of the customer's service equipment and if the operation of the ground fault system relies on the absence of the main bonding jumper at the service equipment but includes an otherwise satisfactory main bonding jumper as a part of its sensing device, the main bonding jumper shall not be installed at the service equipment which would otherwise bond the grounded service conductor to the equipment ground. The on-site ground fault test required by Section 230.95 shall not be performed prior to the above installation requirements. Warning signs shall be installed."

(3) Section 250.30(A) — Grounded Systems. Insert the following after Section 250.30(A)(1) Exception No. 3: "Exception No. 4: A premises' electrical system with an alternate source of power, such as an emergency or standby generator, connected to the normal system via a transfer switch, shall have the alternate source neutral grounded only when the transfer switch causes the neutral conductor to be switched between the normal and the emergency sources. The on-site ground fault test required by Sections 215.10, 230.95 and 517.17 shall not be performed prior to the above installation requirements. Warning signs shall be installed."

(4) Section 250.52(A)(3) — Concrete-Encased Electrode. Insert the following at the end of Section 250.52(A)(3), as follows: "In new construction with steel reinforced concrete footings, a concrete-encased grounding electrode connected to the grounding electrode system is required. The installation shall meet the requirements of Section 250.50. When a concrete encased electrode system is used, a minimum size of 1/2-inch reinforcing bar or rod shall be stubbed up at least 12 inches above the floor plate line or floor level, whichever is the highest, near the service entrance panel location."

(5) Section 250.52(B) — Electrodes Not Permitted for Grounding. Insert the following after Section 250.52(B)(2), as follows "(3) In existing electrical installations, when a service change or upgrade occurs, an existing metal underground water pipe shall not be used unless the metal underground water pipe has been verified as suitable for continued use as a grounding electrode. An existing metal underground water pipe shall be bonded to the new grounding electrode system as required by 250.52 and 250.58."

(6) Section 250.56 — Resistance of Rod, Pipe, and Plate Electrodes. Insert the following at the end of the first sentence: "For permanent installations where the only grounding electrode is a single ground rod, pipe or plate, documented verification of 25 ohms or less shall be provided. Documented verification shall be done by a recognized method, provided by the installer, and made available for the electrical inspector."

(7) Section 250.118 — Types of Equipment Grounding Conductors. Insert the following after Section 250.118(14): "Where metallic conduit is installed on roof tops, an equipment grounding conductor shall be provided within the raceway and sized per Section 250.122."

(8) Section 250.184(B) — Multiple Grounding. Change Sections 250.184(C)(a), (b) and (c) to: "(1) Services (2) Underground circuits where a bare copper neutral is exposed (3) Overhead circuits installed outdoors."

Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0660; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0070; BCD 1-2000, f. 1-6-00, cert. ef 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06

918-305-0180
Amend Article 394 — Concealed Knob-and-Tube Wiring

Add the following to the end of Section 394.12 Uses Not Permitted: "Exception: The provisions of Section 394.12 shall not be construed to prohibit the installation of loose or rolled thermal insulating materials in spaces containing existing knob-and-tube wiring, provided all the following conditions are met:

(1) The visible wiring shall be inspected by a certified electrical inspector or a general supervising electrician employed by a licensed electrical contractor.

(2) All defects found during the inspection shall be repaired prior to the installation of insulation.

(3) Repairs, alterations or extensions of or to the electrical systems shall be inspected by a certified electrical inspector.

(4) The insulation shall have a flame spread rating not to exceed 25 and a smoke density not to exceed 450 when tested in accordance with ASTM E84-91A 2005 Edition. Foamed in place insulation shall not be used with knob-and-tube wiring.

(5) Exposed splices or connections shall be protected from insulation by installing flame resistant, non-conducting, open top enclosures which provide three inches, but not more than four inches side clearances, and a vertical clearance of at least four inches above the final level of the insulation.

(6) All knob-and-tube circuits shall have overcurrent protection in compliance with the 60 degree C column of Table 310-16 of NFPA 70-2005. Overcurrent protection shall be either circuit breakers or type S fuses. The type S fuse adapters shall not accept a fuse of an ampacity greater than permitted in Section 240.53."

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0085; BCD 1-2000, f. 1-6-00, cert. ef 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: BCD 30-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 6-1-05
Rules Adopted: 918-008-0075, 918-008-0080, 918-008-0085, 918-008-0090, 918-008-0095, 918-008-0110, 918-008-0115, 918-008-0120
Rules Repealed: 918-225-0440, 918-251-0030, 918-251-0040, 918-400-0230, 918-690-0340, 918-690-0350
Subject: The purpose of this rulemaking is to establish clear, consistent and uniform processes for statewide code interpretations, code appeals, alternate method rulings and site-specific interpretations of the state building code.
Rules Coordinator: Nicole M. Jantz—(503) 373-7438

918-008-0075
Scope and Purpose

(1) OAR 918-008-0075 to 918-008-0115 applies to the state building code adopted by the division as defined in ORS 455.010. The purpose of these rules is to create a standard process for statewide code interpretations, site-specific interpretations, and alternate method rulings for all specialty code program areas except the boiler program.

(2) Statewide code interpretations and site-specific interpretations clarify existing provisions of the state building code and are not intended to create new provisions.

(3) Alternate method rulings on products not covered in the current state building code apply only to new products, materials or methods and do not create new sections of code.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144
Stats. Implemented: ORS 455.060, 455.100 & 455.110
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06

918-008-0080
Definitions

(1) "Alternate Method Ruling" is a request to rule on the acceptability of new materials, designs or innovative methods of construction not covered by the state building code.

(2) "Petitioner" means:

(a) Any person residing, currently doing business, wishing to do business, or owning property in the State of Oregon; or

(b) A building official authorized to administer and enforce the state building code under 455.148 or 455.150.

(3) "Site-Specific Interpretation" means a division-issued interpretation of a specialty code provision for use by a municipality that applies only to a single project. Site-specific code interpretations assist a local jurisdiction by providing an explanation of the meaning or intent of specific code provisions or sections as they apply to work permitted by the local jurisdiction. Nothing in this section replaces local processes for site-specific interpretations.

(4) "Statewide Code Interpretation" means a division-issued binding interpretation of a specialty code provision that applies in all jurisdictions. Statewide code interpretations provide an explanation of the meaning or intent of specific code provision or section.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144
Stats. Implemented: ORS 455.060, 455.100 & 455.110
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06

918-008-0085
Statewide Code Interpretation Process

(1) A petitioner may request a statewide code interpretation by providing the following information in writing or on division approved forms:

(a) A brief description of the facts and circumstances giving rise to the need for a statewide code interpretation, and

(b) The specialty code section at issue.

(2) Notwithstanding subsections (a) and (b) of this rule, the division may elect to accept a substantially complete request for a statewide code interpretation if circumstances merit.

(3) After receipt and approval of a petitioner's request for interpretation, the division will process the request, reach a conclusion, and distribute the decision.

(4) Every quarter, the division will communicate its actions occurring in the previous quarter concerning statewide code interpretations to the appropriate advisory board.

Stat. Auth.: ORS 455.060, 455.100, 455.110 & 455.144
Stats. Implemented: ORS 455.060, 455.100 & 455.110
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06

918-008-0090
Site-Specific Interpretation Process

(1) A building official may request a site-specific interpretation by providing the following information in writing or on division approved forms:

(a) A brief description of the facts and circumstances giving rise to the need for a site-specific interpretation;

(b) The specialty code section at issue;

(c) The physical address of the building site.

(2) Notwithstanding subsection (a) through (c) of this rule, the division may elect to accept a substantially complete request for a site-specific interpretation if circumstances merit.

(3) After receipt and approval of a building official's request for interpretation, the division will process the request, reach a conclusion, and distribute the decision.

Stat. Auth.: ORS 455.100, 455.110 & 455.144
Stats. Implemented: ORS 455.100 & 455.110
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06

918-008-0095
Alternate Method Ruling Process

(1) A petitioner may request an alternate method ruling by providing the following information in writing or on division approved forms:

(a) Information on the material, design or method the person wishes to utilize:

(b) The specialty code section at issue;

(c) A brief description of the scientific and technical facts and circumstances giving rise to the need for an alternate method ruling.

(2) Notwithstanding subsections (a) through (c) of this rule, the division may elect to accept a substantially complete request for a alternate method ruling if circumstances merit.

(3) After receipt of a petitioner's complete request for interpretation the appropriate advisory board makes a recommendation on the scientific and technical merits of the proposed alternate method ruling, consistent with ORS 455.060.

(4) After considering the recommendation of the appropriate advisory board, the division makes the final decision on the alternate method ruling and distributes the decision consistent with ORS 455.060.

Stat. Auth.: 455.060 & 455.144
Stats. Implemented: 455.060
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06

918-008-0110
Enforcement

All jurisdictions administering and enforcing the state building code must enforce statewide code interpretations and allow the use of alternate method rulings consistent with the original scope of the ruling. Failure to enforce statewide code interpretations or allow statewide alternate method rulings may subject building officials, plans examiners and inspectors to revocation or suspension of certifications.

Stat. Auth.: ORS 455.144, 455.148, 455.150 & 455.740
Stats. Implemented: ORS 455.148, 455.150 & 455.740
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06

918-008-0115
Reconsideration of Division Determination

In accordance with OAR 137-003-0090, 137-004-0080 and ORS 183.484(2):

(1) A petitioner whose request for a site-specific interpretation or a statewide code interpretation was denied may request reconsideration of the agency decision.

(2) Any person, including a member of an advisory board as defined under 455.010, adversely affected or aggrieved by an interpretation may request the division reconsider its determination.

(3) Interpretations or rulings remain in effect despite a reconsideration request unless a petitioner specifically requests and is granted a stay of enforcement of the interpretation.

Stat. Auth.: ORS 455.100, 455.110 & 455.144
Stats. Implemented: ORS 455.100, 455.110
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06

918-008-0120
State Building Code Appeal Process

(1) A person aggrieved by the building official's decision on the application of the state building code adopted under ORS 447.020, 455.020, 455.610, 460.085, 460.360, 479.730 or 480.545 may appeal to either the local jurisdiction's appeals board or the state specialty code chief. The appeals process selected may not change once initiated.

(2) A filing fee of $20 is required for appeals to the state specialty code chief.

(3) An appeal must be filed within 30 calendar days of the building official's decision.

(4) An appeal must include the following information and other information requested by the chief:

(a) The person filing the appeal, the jurisdiction where the act occurred, and any parties involved, including contact information;

(b) The specific code or codes involved, with proper citation;

(c) A written description of appeal, which may include diagrams or drawings with distances shown to scale;

(d) A copy of any written interpretation or decision, if issued by the jurisdiction;

(e) An explanation why the ruling should be reversed;

(f) The status and date of stop work order if issued; and

(g) Other information as requested by the chief.

(h) Notwithstanding subsection (a) through (g) of this rule, the division may elect to accept a substantially complete request for an appeal when it appears that doing so furthers the interests of the state.

(5) The building official and person appealing must respond within 7 calendar days to a request from the chief for additional information. The chief has 14 days to render a decision and inform both the jurisdiction and the person appealing a decision of a local jurisdiction. The maximum time for rendering a decision may not exceed 30 calendar days. The Building Codes Division Administrator may suspend these procedural time frames when the complexity of the issue merits additional decision time.

(6) A decision by a local jurisdiction's appeals board or chief may be appealed to the appropriate advisory board within 30 calendar days of the decision. A filing fee of $20 is charged for an appeal of a local jurisdiction's appeals board decision.

Stat. Auth.: ORS 455.030, 455.144, 460.085 & 480.545
Stats. Implemented: ORS 455.475 & 479.853
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 30-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: BCD 31-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 918-020-0090, 918-050-0000, 918-050-0010, 918-050-0020, 918-050-0030, 918-050-0100, 918-050-0110, 918-050-0120, 918-050-0130, 918-050-0140, 918-050-0150, 918-050-0160, 918-050-0170, 918-050-0800, 918-100-0000, 918-100-0030, 918-225-0610, 918-525-0520
Rules Repealed: 918-050-0200
Subject: This rulemaking is housekeeping in nature. It establishes consistent and uniform terminology by replacing the "Tri-County Service Center" with Tri-County Region. This rulemaking also removes conflicting terminology amongst the different program areas.
Rules Coordinator: Nicole M. Jantz—(503) 373-0226

918-020-0090
Program Standards

The division and every municipality that administers and enforces a building inspection program shall establish and maintain the minimum standards, policies and procedures set forth in this section.

(1) Administrative Standards. A building inspection program shall:

(a) Provide adequate funds, equipment and other resources necessary to administer and enforce the building inspection program in conformance with an approved operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, and account for the electrical program revenues and expenditures separately when administered by the municipality.

(A) Prepare income and expense projections for each code program it will administer and enforce during the reporting period; and

(B) Describe how general administrative overhead costs and losses or surpluses, if any, will be allocated.

(e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;

(f) Make its operating plan available to the public;

(g) Establish a process to receive public inquiries, comments and complaints;

(h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review and inspections;

(i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;

(j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates; and

(k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent.

(2) Permitting Standards. A building inspection program shall:

(a) Provide at least one office within its jurisdictional boundary where permits may be purchased;

(b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;

(c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;

(d) Set reasonable time periods within which the municipality will:

(A) Advise permit applicants whether an application is complete or requires additional information; and

(B) Generally issue a permit after an application has been submitted and approved.

(e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits and minor labels;

(f) Provide a means to receive permit applications via facsimile; and

(g) Require proof of licensing, registration and certification of any person who proposes to engage in any activity regulated by ORS Chapters 446, 447, 455, 479, 693 and 701 prior to issuing any permit.

(3) Plan Review Standards. A building inspection program shall:

(a) Establish policies and procedures for its plan review process to:

(A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;

(B) Make available checklists or other materials at each permitting office it operates that reasonably apprises persons of the information required to constitute a complete permit application or set of plans;

(C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" shall be defined by the division taking into consideration theregional procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction shall also inform the applicant of the time period in which the plan review will generally be completed;

(D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the regional procedures in OAR chapter 918, division 50. The process shall not allow a project to proceed beyond the level of approval authorized by the building official. The process shall:

(i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell or any other part of a building or structure.

(ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and

(iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.

(E) Verify that all plans have been stamped by a registered design professional and licensed plan reviewer where required;

(F) Verify for those architects and engineers requesting the use of alternative one and two family dwelling plan review program that all plans have been stamped by a registered professional who is also a residential plans examiner certified under OAR 918-098-0240. This process shall require the building official to:

(i) Establish polices and procedures in their operatingplan for this process;

(ii) Waive building inspection program plan review requirements for conventional light frame construction for detached one and two family dwellings; and

(iii) Establish an appropriate fee for processing plans submitted under this rule.

(b) Employ or contract with a person licensed, registered or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;

(c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations and certifications held by each plan reviewer and evidence of compliance with all applicable statutory or professional continuing education requirements;

(d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and

(e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds 10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" shall:

(a) Comply with the requirements for prescriptive construction under the One-and Two-Family Dwelling Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling and Park Specialty Code; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following shall be considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the authority having jurisdiction or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule shall be deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program shall:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance program, the municipality's inspectors shall require proof of compliance with the licensing, permitting, registration and certification requirements of persons engaged in any activity regulated by ORS Chapters 446, 447, 455, 479, 693 and 701. Inspectors shall report any violation of a licensing, permitting, registration or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program shall establish in its operating plan:

(a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;

(b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.

(c) Policies and procedures to implement their compliance program;

(d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and

(e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in ORS 455.156 and 455.895.

(10) Electrical Programs. Municipalities that administer and enforce an electrical program shall demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 455.030, 455.467, 455.469 & 455.156
Stats. Implemented: ORS 455.150, 455.467, 455.469 & 455.156
Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 27-2002, f. & cert. ef. 10-1-02; BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 11-2004, f. 8-13-04, cert. ef. 10-1-04; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0000
Purpose and Scope

Division 50 provides administrative procedures for use in all regions of the state and, where applicable, to specified regions of the state. These rules do not supersede or repeal the existing provisions of the state building code and related statutes and rules.

Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 8-2000, f. 6-15-00, cert. ef. 7-1-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0010
Definitions

The following definitions are adopted for OAR chapter 918, division 050:

(1) "Tri-county region" or "Tri-county regional" refers to the geographical area that includes Clackamas, Multnomah and Washington counties.

(2) "Division" means the Building Codes Division of the Department of Consumer and Business Services.

(3) "Permit" includes any license, certificate, approval, registration, insignia of compliance, label, or similar form of permission required by law

to begin construction, reconstruction, alteration, installation, or repair on a structure, device, or equipment regulated by the state building code.

Stat. Auth.: ORS 455.842, 455.844 & 455.846
Stats. Implemented: ORS 455.842, 455.844 & 455.846
Hist.: BCD 8-2000, f. 6-15-00, cert. ef. 7-1-00; BCD 20-2003, f. 12-31-03, cert. ef. 1-1-04; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0020
Standard Tri-County Regional Application Forms

(1) All jurisdictions within the Tri-County region shall use standard permit application and intake checklist forms as approved by the division.

(2) The division shall consider for adoption proposed amendments to the standard application and intake checklist forms.

(a) Proposals for amendment to the application forms shall include: The existing unamended form(s);

(A) The form(s) containing the appropriate amendments; and

(B) A brief explanation of the need for the amendments.

(b) Proposals to amend the approved forms must be filed with the division no later than February 1 or August 1.

(c) The division shall notify all affected municipalities and interested parties of the division's determination regarding proposed amendments and provide copies of the amended form(s).

(d) Any form changes shall be effective in all Tri-County region jurisdictions on July 1 or January 1 following adoption.

Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 8-2000, f. 6-15-00, cert. ef. 7-1-00; BCD 20-2003, f. 12-31-03, cert. ef. 1-1-04; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0030
Standard Tri-County Regional Processes

All jurisdictions within the Tri-County region shall use uniform processes for permit application, plan review, permit issuance and recording inspections as approved by the division, including, but not limited to:

(1) Minor labels;

(2) Issuing permits when no plan review is required;

(3) Recording inspections;

(4) Partial permits;

(5) Deferred submittals;

(6) Over-the-counter permits that require plan review; and

(7) Plan review issue resolution.

Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 8-2000, f. 6-15-00, cert. ef. 7-1-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0100
Tri-County Regional Fee Methodology for Residential Permits

All municipalities in the Tri-County region shall use the following methodologies consistent with the terminology of the state building code to calculate permit fees for residential construction.

(1) Plumbing permit fees for new construction include one kitchen and are based on the number of bathrooms, from one to three, on a graduated scale. An additional set fee shall be assessed for each additional bath or kitchen.

(a) An additional fee shall not be charged for the first 100 feet of water and sewer lines, hose bibbs, icemakers, underfloor low-point drains and rain drain packages that include the piping, gutters, downspouts and perimeter system.

(b) Fee does not include:

(A) Any storm water retention/detention facility;

(B) Irrigation and fire suppression systems; or

(C) Additional water, sewer and service piping or private storm drainage systems exceeding the first 100 feet.

(c) Additions, alterations and repairs shall be calculated based on the number of fixtures, appurtenances and piping with a set minimum fee.

(2) All mechanical permit fees shall be calculated per appliance and related equipment with a set minimum fee.

(3) Structural permit fees for new construction and additions shall be calculated using the most current ICBO Building Valuation Data Table, for "good construction" and without the Oregon modifier, multiplied by the square footage of the dwelling to determine the valuation. The valuation shall then be applied to the jurisdiction's fee schedule to determine the permit fee. The plan review fee shall be based on a predetermined percentage of the permit fee as set by the local jurisdiction.

(a) The square footage of a dwelling or addition shall be determined from outside exterior wall to outside exterior wall for each level. The square footage of garages, carports, covered porches or patios and decks shall be calculated separately at the corresponding values from the most current ICBO Building Valuation Data Table.

(b) Permit fees for remodels and alterations shall be calculated using the valuation determined by the fair market value as determined by the building official, and applied to the jurisdiction's fee table.

(4) Additional local administrative fees or other local fees shall not be added to the cost of the building permit, except those administrative fees adopted by a municipality for plan reviews performed by licensed plan reviewers accepted pursuant to ORS 455.465.

Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 9-2000, f. 6-15-00, cert. ef. 10-1-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0110
Tri-County Regional Fee Methodology for Commercial Permits

All municipalities in the Tri-County region shall use the following methodologies consistent with the terminology of the state building code to calculate permit fees for commercial structures.

(1) Plumbing permit fees shall be calculated based on the number of fixtures and footage of piping with a set minimum fee. The plan review fee shall be calculated separately based on a predetermined percent of the permit fee as set by the local jurisdiction.

(2) Mechanical permit fees shall be determined based on the value of the mechanical equipment and installation costs and applied to the jurisdiction's fee schedule with a set minimum fee. The plan review fee shall be based on a predetermined percentage of the permit fee as set by the local jurisdiction.

(3) Structural permit fees shall be calculated using the most current ICBO Building Valuation Data Table, using the occupancy and construction type as determined by the building official with no Oregon modifier, multiplied by the square footage of the structure to determine the valuation, or value as stated by the applicant, whichever is greater, to determine the valuation. The valuation shall then be applied to the jurisdiction's fee schedule to determine the permit fee, with a set minimum fee. When the construction or occupancy type does not fit the ICBO Building Valuation Data Table, the valuation shall be determined by the building official with input from the applicant. The plan review fee shall be based on a predetermined percentage of the permit fee as set by the local jurisdiction.

(4) Additional local administrative fees or other local fees shall not be added to the cost of the building permit.

Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 9-2000, f. 6-15-00, cert. ef. 10-1-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0120
Tri-County Regional Electrical Permit Fees

Electrical Permit fees in the Tri-County region shall be calculated based on the categories, procedures and requirements established in OAR 918-309-0020 to 918-309-0070. Additional local administrative fees or other local fees shall not be added to the cost of the building permit.

Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 9-2000, f. 6-15-00, cert. ef. 10-1-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0130
Tri-County Regional Manufactured Home Siting Permits

(1) All jurisdictions in the Tri-County region shall charge a single fee for the installation and set-up of manufactured homes. This single fee shall include the concrete slab, runners or foundations when they comply with the prescriptive requirements of the **Oregon Manufactured Dwelling and Park Specialty Code**, electrical feeder and plumbing connections and all cross-over connections. Additional local administrative fees or other local fees shall not be added to the cost of the building permit, except those administrative fees adopted by a municipality for plan reviews performed by licensed plan reviewers accepted pursuant to ORS 455.465.

(2) Decks, other accessory structures and foundations that do not comply with the prescriptive requirements of the **Oregon Manufactured Dwelling and Park Specialty Code**, utility connections beyond 30 lineal feet, new electrical services or additional branch circuits, new plumbing and other such items that fall under the building code may require separate permits.

(3) When the jurisdiction has reason to believe that the existing electrical service to a manufactured dwelling may be unsafe or inadequate, the jurisdiction may require a separate permit to inspect the electrical service.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 9-2000, f. 6-15-00, cert. ef. 10-1-00; BCD 26-2000(Temp), f. 10-4-00, cert. ef. 1-1-01 thru 6-29-01; BCD 31-2000, f. 12-27-00, cert. ef. 1-1-01; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0140
Residential Fire Suppression Systems

Stand-alone and multi-purpose fire suppression system permit fees charged in the Tri-County region shall each be calculated as separate flat fees based on the square footage of the structure with graduated rates for dwellings with 0 to 2000 square feet, 2001 to 3600 square feet, 3601 to 7200 square feet and 7201 square feet and greater. The permit fee shall be sufficient to cover the costs of inspection and plan review.

Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 19-2001, f. 12-21-01, cert. ef. 4-1-02; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0150
Medical Gas

Plumbing permit fees for medical gas systems installed in the Tri-County region shall be determined based on the value of installation costs and the system equipment, including but not limited to, inlets, outlets, fixtures and appliances and applied to the jurisdictions fee schedule with a set minimum fee. The plan review fee shall be based on a predetermined percentage of the permit fee as set by the local jurisdiction.

Stat. Auth.: ORS 455.844 & 455.846
Stats. Implemented: ORS 455.844 & 455.846
Hist.: BCD 19-2001, f. 12-21-01, cert. ef. 4-1-02; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0160
Phased Projects

The plan review fee charged in the Tri-County region for a phased project is based on a minimum phasing fee, to be determined by the jurisdiction, plus 10 percent of the total project building permit fee not to exceed $1,500 for each phase.

Stat. Auth.: ORS 455.842 & 455.846
Stats. Implemented: ORS 455.842 & 455.846
Hist.: BCD 11-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0170
Deferred Submittals

The fee charged in the Tri-County region for processing and reviewing deferred plan submittals shall be an amount equal to a percentage, to be determined by the local jurisdiction, of the building permit fee calculated according to OAR 918-050-0110(2) and (3) using the value of the particular deferred portion or portions of the project, with a set minimum fee. This fee is in addition to the project plan review fee based on the total project value.

Stat. Auth.: ORS 455.846
Stats. Implemented: ORS 455.842 & 455.844
Hist.: BCD 12-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-050-0800
Permit Surcharges

A one-percent surcharge will be assessed upon the total permit fees collected.

Stat. Auth.: ORS 455.842
Stats. Implemented: ORS 455.842
Hist.: BCD 10-1999(Temp), f. 9-7-99, cert. ef. 10-1-99 thru 3-28-00; BCD 17-1999, f. 12-30-99, cert. ef. 1-1-00; BCD 8-2000, f. 6-15-00, cert. ef. 7-1-00, Renumbered from 918-020-0520; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-100-0000
Applicability of Rules

(1) The rules in OAR 918-100-0000 to 918-100-0120 implement the statewide minor installation label, master permit and special alternative inspection programs.

(2) Nothing in these rules shall prohibit a person from purchasing a regular permit in order to insure individual inspection of any installation.

(3) Tri-County regional minor installation labels issued prior to October 1, 2004 are considered valid until expired and may be used in jurisdictions outside the Tri-County region.

(4) The division may adopt policies and procedures to ensure a smooth transition from the Tri-County regional minor label program to the statewide minor label program.

Stat. Auth.: ORS 447.072, 447.076, 455.144(7), 455.627, 479.540(15) & 479.570(2)
Stats. Implemented: ORS 447.072, 447.076, 455.627, 479.540(15) & 479.570(2)
Hist.: BCD 27-1994, f. & cert. ef. 11-15-94; BCD 4-2002, f. 3-8-02, cert. ef. 4-1-02; BCD 22-2004, f. & cert. ef. 10-1-04; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-100-0030
Minor Label Fees

Minor labels sold by the division for installations governed by these rules shall be sold in lots of ten at a cost of $125.

Stat. Auth.: ORS 447.072, 447.076, 447.095, 455.020, 455.144(7), 455.154, 455.155, 455.627, 455.844, 455.846, 479.540(15), 479.570(2) & 479.840
Stats. Implemented: ORS 447.072, 447.076, 455.154, 455.155, 455.627, 455.844, 455.846, 479.540(15) & 479.570(2)
Hist.: BCD 27-1994, f. & cert. ef. 11-15-94; BCD 4-2002, f. 3-8-02, cert. ef. 4-1-02; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-225-0610
Fees for Permits and Inspections

(1) Purpose and Scope of Rules. This rule sets permit and inspection fees.

(2) Authority for Action:

(a) ORS 480.595 authorizes the Board to establish boiler permit fees. ORS 480.607 additionally authorizes establishment of fees and increases up to ten percent on fees set by ORS 480.595(3) and (4), 480.600(2), 480.630(4) and (6);

(b) Other fees are authorized by ORS 480.630.

(3) Permit Fees Generally Under ORS 480.595 are established:

(a) Effective January 1, 2002, under ORS 480.595(3) and 480.607 permit fees, including inspection fees shall be:

(A) Boilers of 15 horsepower or less, $71.50;

(B) Boilers greater than 15 horsepower to 100 horsepower, $93.50;

(C) Boilers greater than 100 horsepower to 500 horsepower, $110;

(D) Boilers greater than 500 horsepower, $121;

(E) Cast iron boilers, $71.50;

(F) Pressure vessels having a product volume of 20 cubic feet or less, $60.50;

(G) Pressure vessels having a product volume greater than 20 cubic feet, $82.50.

(b) The fee for a reinspection provided in ORS 480.595(4) shall be charged at the rate of $66 per hour for travel and inspection time to defray the cost of a re-inspection when deviations from the minimum safety standards are found during any inspection.

(4) The fee for the special permit set out in ORS 480.600(2) is $27.50.

(5) Miscellaneous fees under ORS 480.605:

(a) The fees for shop inspection service provided in ORS 480.605(1) and witnessing hydrostatic or other test under ORS 480.605(3) are:

(A) Hourly charges for travel and inspection, $66;

(B) Hourly charge for travel and inspections before 8 a.m., after 5 p.m., on weekends and holidays, $99.

(b) In addition to the hourly charge the actual cost of meals and lodging are also charged.

Stat. Auth.: ORS 480.595, 480.600, 480.605, 480.607 & 480.630
Stats. Implemented: ORS 580.595, 480.600, 480.605, 480.607 & 480.630
Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 19, f. 6-21-73, ef. 7-1-73; DC 8-1980, f. & ef. 7-1-80; DC 1-1981, f. & ef. 1-22-81; Renumbered from 814-025-0025; BCA 8-1990, f. 4-18-90, cert. ef. 5-1-90; BCA 13-1990, f. & cert. ef. 6-6-90; BCA 20-1991(Temp), f. & cert. ef. 6-14-91; BCA 30-1991, f. & cert. ef. 9-9-91; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0050; BCD 10-1996(Temp), f. & cert. ef. 7-1-96; BCD 28-1996, f. & cert. ef. 12-6-96; BCD 16-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 17-2002(Temp), f. & cert. ef. 7-19-02 thru 1-14-03; BCD 31-2002, f. 12-20-02 cert. ef. 1-1-03; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

918-525-0520
Additional Fees

(1) When the Division determines that a person has failed to obtain required inspections, permits, insignia and/or plan review, requiring Division staff to work outside normal business hours, the person shall be charged additional fees as described in sections (3) and (4) of this rule.

(2) Persons who sell or ship vehicles or equipment known to be out of compliance or requiring inspections or reinspections prior to sale or shipment requiring Division staff to work outside normal business hours, shall be charged additional fees as described in sections (3) and (4) of this rule.

(3) Persons requesting or requiring inspections or field technical service, outside normal business hours of the Division, shall be charged fees at 1-1/2 times the amounts required by OAR 918-525-0510, except for travel expenses.

(4) Persons requesting or requiring inspections or field technical service on recognized state holidays shall be charged double the amounts required by OAR 918-525-0510, except for travel expenses.

Stat. Auth.: ORS 446.176, 455.210 & 455.220
Stats. Implemented: ORS 446.176, 455.210 & 455.220
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06

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

Rule Caption: Repeal of rules associated with agency programs terminated by the 2005 Legislative Session.
Adm. Order No.: FCS 1-2006
Filed with Sec. of State: 1-9-2006
Certified to be Effective: 1-9-06
Notice Publication Date: 12-1-05

Rules Repealed: 441-750-0000, 441-750-0010, 441-750-0020, 441-750-0030, 441-750-0040, 441-780-0010, 441-780-0020, 441-780-0030, 441-780-0040, 441-780-0050, 441-780-0060, 441-780-0070, 441-780-0080, 441-780-0090, 441-950-0010, 441-950-0020, 441-950-0030, 441-950-0040, 441-950-0050
Subject: The 2005 Legislature eliminated this agency's jurisdiction in three small programs, effective January 1, 2006. These programs are the Oregon Capital Corporation, Digital Signatures Authority, and International Trade Consultants Programs. The rules that had been adopted for each of these programs are repealed.
Rules Coordinator: Berri Leslie—(503) 947-7478

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Department of Consumer and Business Services, Insurance Division Chapter 836

Adm. Order No.: ID 13-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-15-06
Notice Publication Date: 10-1-05
Rules Adopted: 836-071-0263
Rules Amended: 836-071-0277
Subject: This rulemaking permanently adopts temporary rulemaking that establishes minimum terms of disclosure when an insurance consumer pays compensation to an insurance producer and the transaction is not subject to ORS 735.455, 744.091, or 744.093, or pays compensation to an insurance consultant who also receives other compensation.
Rules Coordinator: Sue Munson—(503) 947-7272

836-071-0263
Fees charged by Insurance Consultants or Insurance Producers

(1) When an insurance consultant or an affiliate of an insurance consultant receives from a prospective insured any compensation authorized under the Insurance Code or rules adopted thereunder, neither the insurance consultant nor the affiliate may accept or receive any compensation from an insurer or other third party for services provided to the prospective insured in addition to the compensation paid by the prospective insured unless the insurance consultant, prior to the transaction:

(a) Has obtained the prospective insured's documented acknowledgment that the compensation will be received by the insurance consultant or affiliate; and

(b) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the insurance consultant shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.

(2) When an insurance producer or an affiliate of an insurance producer receives any compensation otherwise authorized under the Insurance Code or OAR 836-071-0269 to 836-071-0277 from a prospective insured, neither the insurance producer nor the affiliate may accept or receive any compensation from an insurer or other third party for the placement of insurance in the same or related transaction unless the insurance producer, prior to the prospective insured's purchase of insurance, has:

(a) Obtained the prospective insured's documented acknowledgment that the compensation will be received by the insurance producer or affiliate; and

(b) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the insurance producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.

(3) A person is not a prospective insured for the purpose of this rule if the person is merely:

(a) A participant or beneficiary of an employee benefit plan; or

(b) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.

(4) This rule does not apply to:

(a) An insurance producer with respect to a transaction to which ORS 735.455, 744.091 or 744.093 applies;

(b) An insurance producer when the insurance producer acts only as an intermediary between an insurer and the prospective insured's insurance producer, such as a managing general agent, a wholesale insurance producer under ORS 744.093, a surplus lines licensee when transacting insurance with a producing insurance producer under ORS 735.455 or a sales manager;

(c) An insurance producer with respect to an incidental charge that is received from the prospective insured and is authorized under OAR 836-071-0267; or

(d) A reinsurance intermediary.

(5) As used in this rule:

(a) "Affiliate" means a person that controls, is controlled by or is under common control with the insurance consultant or insurance producer.

(b) "Compensation from an insurer or other third party" means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement.

(c) "Compensation from a prospective insured" does not include any fee or amount collected by or paid to the insurance producer that does not exceed an amount established by the Director.

Stat. Auth.: ORS 731.244, 744.077 & 744.650
Stats. Implemented: ORS 737.205, 742.009, 744.077, 744.650, 746.015
Hist.: ID 9-2005(Temp), f. 5-18-05, cert. ef. 8-1-05 thru 1-15-06; ID 13-2005, f. 12-29-05, cert. ef. 1-15-06

836-071-0277
Service Fees Allowed on Commercial Lines; Conditions

(1) Service fees may be charged with respect to the transaction of insurance that covers other than an individual's person, property, or liability.

(2) Except as authorized in ORS 744.091 and 744.093, a service fee may be charged only in those instances where the insurance producer has provided service additional to what is the usual and customary practice of insurance producers under similar circumstances. The insurance producer must give a written explanation of the charge and the reason for it to the person charged. If OAR 836-071-0260 or 836-071-0263 applies to the transaction in which a service fee is charged under this rule, the insurance producer may include the written explanation with the disclosure required by OAR 836-071-0260 or 836-071-0263 or provide the written explanation separately.

(3) A service fee may not be charged with respect to arranging the financing of premium payments. This does not preclude finance charges by insurance producers on their own accounts, or service charges by premium finance companies, which conform to the provisions of ORS 746.405 to 746.530.

Stat. Auth.: ORS 731.244, 744.077 & 744.650
Stats. Implemented: ORS 737.205, 742.009, 746.015, 746.405 - 746.525
Hist.: IC 58, f. 8-9-74, ef. 9-11-74; IC 9-1983(Temp), f. 11-10-83, ef. 11-15-83; Renumbered from 836-030-0065, ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 9-2005(Temp), f. 5-18-05, cert. ef. 8-1-05 thru 1-15-06; ID 13-2005, f. 12-29-05, cert. ef. 1-15-06

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Department of Consumer and Business Services, Minority, Women and Emerging Small Business Chapter 445

Adm. Order No.: MWESB 1-2005(Temp)
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 12-29-05 thru 6-27-06
Notice Publication Date:
Rules Amended: 445-050-0115, 445-050-0125, 445-050-0135
Subject: These rule changes implement the following changes made by 2005 Oregon Laws Chapter 683:

Creates a two-tier system for certification of emerging small businesses and modifies the qualifications by increasing the employee and gross-receipts thresholds. "Tier one firm" means a business that employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed $1.5 million for a business performing construction, as defined in ORS 446.310, or $600,000 for a business not performing construction. "Tier two firm" means a business that employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed $3 million for a business performing construction, as defined in ORS 446.310, or $1 million for a business not performing construction.

Increases the limit on certification from seven to twelve years, six years at each tier. Allows reinstatement of a formerly certified busi-

ness if the business still qualifies as an emerging small business and has eligibility remaining.

Transfers the Emerging Small Business Account from the Consumer and Business Services Fund to the State Highway Fund.

Rules Coordinator: Sheila Haywood—(503) 947-7950

445-050-0115
Eligibility Standards

To be eligible for certification as an ESB, a business must meet all the following criteria:

(1) A firm must be in existence, operational and in business for a profit;

(2) Have average, annual gross receipts over the last three years not exceeding $1.5 million for tier one construction firms and $600,000 for tier one non-construction firms; and $3 million for tier two construction firms and $1 million for tier two non- construction firms.

(3) The department will adjust annually the amount of the average annual gross receipts required to qualify as a tier one firm or a tier two firm using the most recent three-year average of the Portland-Salem Consumer Price Index (CPI) for All Urban Consumers for All Items, as reported by the United States Bureau of Labor Statistics.

(4) If a tier one firm provides compelling information showing, in the judgment of the Department of Consumer and Business services, that the firm has not been afforded an opportunity to bid on emerging small business projects during a year of eligibility, the department will extend the tier one designation of the firm for an additional year. A tier one firm may receive the extension only once.

(5) Have its principal place of business located in the State of Oregon, as determined by tax filing status;

(6) Be independent. An ESB is not eligible if it is a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.

(7) Be properly licensed and if required, legally registered in this state: (e.g., registered as a domestic corporation or partnership, assumed business name filed, Construction Contractors Board registration, etc.);

(8) Have fewer than 20 full-time equivalent employees in tier one and have fewer than 30 full-time equivalent employees in tier two. A full-time equivalent employee is calculated as follows:

(a) Hours worked by part-time and seasonal employees shall be converted into full-time equivalent employee hours by dividing the total hours worked by all part-time and seasonal employees by 2080.

(b) The owners of the firm shall not be considered full-time equivalent employees.

(c) The year period during which full-time equivalent employees shall be calculated shall be the same period as the ESB's tax year.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055
Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0115; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2005(Temp), f. & cert. ef. 12-29-05 thru 6-27-06

445-050-0125
Application Form and Procedure

(1) OMWESB will utilize ORS 200.005 to review for eligibility for certification as an ESB tier one or tier two.

(2) Application Form. Firms wishing to be certified as ESBs shall complete the application form provided by OMWESB.

(3) Submittal of application. The completed application form, together with all required supporting documentation, shall be submitted to the Office of Minority, Women and Emerging Small Business, 350 Winter St NE, Salem, PO Box 14480, OR 97309-0405

(4) Processing applications. The OMWESB will conduct a review and take action on completed applications as promptly as its resources permit. The order of priority for processing applications shall be the date received by OMWESB.

(5) Determination. The OMWESB shall make a determination based on the eligibility standards included in this chapter and the applicable laws of the State of Oregon. As part of its investigation, OMWESB may require owners to provide information in addition to that requested on the application forms. The applicant has the burden of proving that it is eligible for certification and re-certification at all levels of review. Applicants shall be notified by mail promptly after a decision has been made. Where the OMWESB has denied an application, the letter shall set forth the specific reasons for the denial. Certification may be revoked at any time if the OMWESB determines that the ESB no longer meets the eligibility standards. The ESB shall notify OMWESB within 30 days of any changes in its ownership which may affect its continued eligibility as an ESB. Failure to notify OMWESB may result in denial/decertification.

(6) The applicable emerging small business size standard for each applicant set out in OAR 445-050-0115(1)(b) shall be determined by the firm's primary area of work. Registration of the firm with Construction Contractors and/or Landscape Contractors Board will establish a firm as a construction firm. A construction-related trucking firm will also be considered a construction firm for the purposes of this program.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055
Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0125; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2005(Temp), f. & cert. ef. 12-29-05 thru 6-27-06

445-050-0135
Recertification

(1) Certification as an ESB is valid for three years from the date of certification.

(2) A recertification notice shall be sent to certified ESBs 60 days prior to expiration of current certification. The ESB shall promptly return the recertification application along with any requested documentation (e.g., evidence of change in ownership; federal tax returns for the last year, etc.). Recertification is not automatic. The applicant must demonstrate that their business still meets the criteria set out in OAR 445-050-0105 through 445-050-0165.

(3) The signed and notarized recertification application shall be reviewed by the OMWESB staff to determine the ESB's continued eligibility. A request to verify information submitted to OMWESB may be required.

(4) Failure to return the completed recertification application by the expiration date shall result in administrative closure of the file.

(5) Firms may only be certified as an ESB for a maximum of twelve consecutive years from original certification date or 13 years for tier 1 firms that meet the criteria for eligibility standards under OAR 445-050-0115(d).

(6) An annual affidavit of "no change" will be sent to the firm approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The completed affidavit, along with federal tax information for the previous year, and documentation of any changes, must be submitted prior to the anniversary date, or the firm will be decertified.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055
Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0135; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2005(Temp), f. & cert. ef. 12-29-05 thru 6-27-06

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Department of Consumer and Business Services, Oregon Medical Insurance Pool Board
Chapter 443

Adm. Order No.: OMIPB 2-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Adopted: 443-002-0095
Rules Amended: 443-002-0010, 443-002-0030, 443-002-0060, 443-002-0070, 443-002-0080, 443-002-0090, 443-002-0110, 443-002-0120
Subject: The Department of Consumer and Business Services is modifying the administrative rules for the Oregon Medical Insurance Pool in order to implement changes made in Senate Bill 117, Senate Bill 123, and Senate Bill 130 (2005). These rules also implement changes made in House Bills 2987 and 3431 (2003).

Changes include:

• Allow individuals who qualify for the federal health coverage tax credit to be eligible for the high-risk pool.

• Create exceptions to the 12-month waiting period following OMIP termination.

• Agents will no longer determine whether or not a commercial carrier would deny coverage to an individual. Applicants to the pool will now disclose their medical conditions on the OMIP application.

• Members will no longer be eligible for OMIP if they are eligible for Medicare.

• OMIP will allow applicants to join the pool if a commercial carrier has approved them for coverage, but the carrier imposed a wait-

ing period for certain medical conditions or limited the plans available to that applicant because of a medical condition.

• The lifetime benefit is being increased from $1 million to $2 million.

• Modify the date that carriers use to determine the number of lives enrolled to March 31 of each year.

Rules Coordinator: Nicole Shuba—(503) 378-4676

443-002-0010
Definitions

(1) "Administering Insurer" means the insurance company selected in keeping with ORS 735.620 to operate OMIP on behalf of the OMIP Board.

(2) "Appeal" means a request to have an adverse Grievance decision reviewed.

(3) "Applicant" means a person who has is applying for OMIP coverage.

(4) "Board" means the Oregon Medical Insurance Pool Board as established under ORS 735.610.

(5) "Carrier" means an insurance company or health care service contractor that has a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance.

(6) "Claim" means a request for payment under the terms of an insurance Contract.

(7) "Creditable Coverage" means prior health care coverage as defined in 42 U.S.C. 300gg as amended and in effect on July 1, 1997.

(8) "Dependent" means the Contract Holder's spouse, child, stepchild, or adopted child that is enrolled in OMIP as defined in OAR 443-002-0150 and 443-002-0160.

(9) "Eligibility" means meeting the residency and medical, portability, or federal health coverage tax credit (HCTC) requirements to qualify for the OMIP program as established in OAR 443-002-0060.

(10) "Enrolled Dependent" means a Dependent of the Contract Holder whose application is accepted by OMIP and who is enrolled under an OMIP Contract.

(11) "Enrollee" means an individual who is enrolled in one of the OMIP medical benefit plans.

(12) "External Review" is a review performed by a state contracted independent review organization when an Enrolleehas exhausted all internal Grievance and Appeal procedures and wants the opinion of a medical professional who is separate from the patient's health insurance company. External Review applies only to disputes about medical necessity, experimental or investigational treatment, or need for continuity of care.

(13) "Grievance" means a written complaint submitted to OMIP's Administering Insurer by or on behalf of an Enrollee regarding:

(a) Availability, delivery or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) Claims payment, handling or reimbursement for health care services; or

(c) Matters pertaining to the contractual relationship between an Enrollee and OMIP.

(14) "Heath Coverage Tax Credit" means a credit individuals who have been affected by competition from foreign trade have been deemed eligible to receive by the US Department of Labor under section 35(f) of subpart C, Part IV subchapter A of chapter 1 of the Internal Revenue Code.

(15) "Insurer" is defined in ORS 735.605(4).

(16) "Medicaid" means medical assistance provided under 42 U.S.C. section 396a.

(17) "Medically Necessary" means those services and supplies that are required for diagnosis or treatment of Illness or Injury and which, in the Reasonable judgment of OMIP, are: appropriate by treatment setting and level of care, in amount, duration and frequency of care and consistent with the symptoms or diagnosis and treatment of an Enrollee's condition; appropriate with regard to widely accepted standards of good medical practice; not primarily for the convenience of an Enrollee or a Provider of services or supplies; and the least costly of the treatment settings, alternative supplies or levels of service which can be safely provided to the patient. This means, for example, that care rendered in a Hospital inpatient setting or by a nurse in the patient's home is not Medically Necessary if it could have been provided in a less expensive setting, such as a Skilled Nursing Facility, without harm to the patient.

(a) The fact that a Professional Provider furnished, prescribed, ordered, recommended, or approved a service or supply does not, of itself, make the service or supply Medically Necessary. We will consult with professional consultants, peer review committees, or other appropriate sources for recommendations regarding the necessity of the services received by enrollees.

(b) Medically Necessary care excludes care that is primarily custodial care. Custodial care helps a person conduct activities of daily living and can be provided by people without medical or paramedical skills, for example, help in bathing, eating, dressing or getting in or out of bed. Custodial care also includes care that is primarily for the purpose of separating a patient from others or preventing a patient from harming him or herself. While a condition must be Medically Necessary for benefits to be paid, a Medically Necessary condition can be excluded from benefits provided by an OMIP Contract.

(18) "Medicare" is defined in ORS 735.605(6).

(19) "OHP" means the same definition as given to Medicaid in subsection (15).

(20) "OMIP" means the Oregon Medical Insurance Pool.

(21) "Oregon Resident" means an individual resides permanently in Oregon as defined in OAR 443-002-0060(1)(a).

(22) "Portability Coverage" means that ongoing health insurance is available to an applicant if that applicant was enrolled in an employer-sponsored group health Plan for at least six months immediately prior to that insurance coverage ending.

(23) "Pre-existing Condition" means a condition for which medical advice, diagnosis, care, or treatment was recommended or received in the six-months before coverage began. For purposes of the six month limitation period, the term pregnancy shall include, pre and postnatal care, miscarriage, abortion, delivery (vaginal or surgical), and complication of pregnancy, including, but not limited to: intra-abdominal surgical procedures; placenta abruptio and placenta previa; acute exacerbations or heart conditions and or diabetes; toxemias.

(24) "Reinsurer" is defined in ORS 735.605(9).

Stat. Auth.: ORS 735.610(6)
Stats. Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

443-002-0030
Assessment for Operating Expenses and Counting Insureds

(1) OMIP shall assess insurers and reinsurers, as defined in ORS 735.605, for the purpose of collecting monies to cover expenses and losses of OMIP in excess of premiums, which are not or will not be sufficiently covered by funds in the OMIP Account defined in ORS 735.612.

(a) Pursuant to ORS 735.614(2), OMIP counts both the number of Oregon insureds and Oregon certificate holders for assessment purpose. Health insurance issued in other states for certificate holders in Oregon shall be subject to the assessment count.

(b) OMIP will assess insurance companies based on the number of persons insured in Oregon. The actual insurance transaction does not have to take place in the State of Oregon for it to be counted.

(c) All insurers that are authorized to transact health or medical insurance in Oregon and that insure persons residing in Oregon will be subject to the assessment. All reinsurers that reinsure medical insurance in Oregon on or after September 27, 1987, will be subject to assessment.

(2) The OMIP Board shall determine the frequency of such assessments based on projected cash balances and operating revenues and expenditures.

(3) The projected cash balance shall take into account a reserve intended to cover claims incurred but not reported or paid. The Board shall review the reserve quarterly to determine its adequacy and adjust it as needed.

(4) The amount for which OMIP assesses each insurer or reinsurer as defined in ORS 735.605 shall depend on each insurer's or reinsurer's proportion of the total of all Oregon insureds and certificate holders insured or reinsured and the amount of funds that OMIP needs to cover projected expenses and losses in excess of the premiums:

(a) Annually, OMIP will send a request to all insurers insuring or reinsuring health or medical insurance in Oregon to report the number of persons insured or reinsured in Oregon as of March 31 of the current year.

(A) The insurer or reinsurer will have 30 days from the date of the request to return the requested count.

(B) Based on the information obtained in the requested count, OMIP will issue bi-annual assessments. Insurers, including reinsurers, will have 30 days from the notice of assessment to make payment.

(C) If OMIP discovers that an insurer (including a reinsurer) has inaccurately reported the number of persons insured, OMIP may request that the insurer provide an accurate count and may reassess the insurer accordingly.

(b) OMIP shall determine the total number of Oregon insureds and certificate holders insured or reinsured as follows:

(A) OMIP shall limit the count of insureds and certificate holders insured or reinsured to medical insurance as defined in ORS 735.605(5);

(B) The count shall include all insureds and certificate holders, including dependents, other individuals whose medical insurance coverage is insured or reinsured in whole or in part, and, to the extent permitted by federal law, individuals covered under excess loss coverage written on self-funded medical plans;

(C) Reinsurers may exclude from the number reported those individuals that the other insurers or reinsurers have counted;

(D) The insurers and reinsurers may use any reasonable method of estimating or may use actual counts of the number of individuals for whom coverage is provided. They must inform OMIP how they calculated any estimates.

(5) If assessment collections exceed the amount needed to meet OMIP expenses and losses, OMIP shall hold and invest the excess funds and use the earnings and interest, to offset future net losses or to reduce OMIP premiums. For the purposes of this section, “future net losses” include reserves for incurred-but-not-reported claims.

Stat. Auth.: ORS 735.610(6) & 735.614
Stats. Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

443-002-0060
Eligibility

(1) Individuals applying for OMIP coverage must meet the following eligibility requirements:

(a) The applicant must be a resident of the State of Oregon.

(A) A resident is defined as a person who resides permanently in Oregon; or

(B) A person who maintains a permanent place of residence in Oregon, spends more than 180 days per year in Oregon and files income taxes in Oregon.

(b) The applicant must meet one of the medical eligibility requirements set forth in subsection (c), one of the portability eligibility requirements set forth in subsection (d) or the Federal Trade Act of 2002 eligibility requirements set forth in subsection (e).

(c) The applicant must meet one of the following medical eligibility requirements:

(A) Applicant received a declination of individual health insurance coverage within the last six months due to health reasons; or

(B) A health insurance agent refused the applicant’s request to submit an application for individual health insurance within the last six months because the agent believed that the insurance carrier would refuse to provide coverage due to the health condition of the applicant; or

(C) Applicant received a notice of termination of individual health insurance coverage within the last six months due to health reasons; or

(D) Applicant was offered individual health insurance coverage that contained a waiver that excluded coverage for a specific medical condition; or

(E) Applicant was offered individual health insurance but was limited by the choice of plans the carrier was willing to offer due to a specific medical condition; or

(F) The applicant is transferring from another state’s high risk pool and has moved to Oregon permanently.

(d) The applicant must apply for OMIP coverage within sixty-three (63) days of losing the prior group health insurance coverage and must have had the prior group coverage in place for a period of not less than 180 days and must meet one of the following portability eligibility requirements:

(A) Applicant was covered under a group health benefit plan from an Oregon employer but is ineligible for portability coverage from employer’s insurance carrier because the applicant no longer resides in the carrier’s service area; or

(B) Applicant has exhausted COBRA benefits and portability coverage is not available because the carrier is not required to offer it; or

(C) Applicant is moving to Oregon after leaving group coverage in another state, has exhausted all rights under federal or Oregon state law to continue that coverage (i.e. COBRA or Oregon state continuation), and does not have portability coverage available.

(e) The applicant is eligible for the health insurance tax credit under section 35 of the Internal Revenue Code effective for taxable years beginning after December 31, 2001.

(2) If an applicant meets the eligibility requirements outlined in section 1 above, the applicant may also apply for OMIP coverage for their dependent(s).

(a) Dependents include a legal spouse and any unmarried children, under the age of 23 that live with the primary applicant. Other unmarried children, under age 23 are also eligible if the applicant is required to contribute toward their support. Also unmarried children, under the age of 23 who are enrolled as a full time student at an accredited institution of higher learning, are eligible even if he/she does not live in the applicants home.

(b) Children are defined as:

(A) The applicants natural child; or

(B) Stepchildren living in the home or non-resident step children if there is a qualified medical child support order that requires the applicant to provide health insurance; or

(C) Legally Adopted children.

(3) Applicants and/or dependents of applicants will be ineligible for OMIP coverage under the following conditions regardless of whether they satisfy other eligibility requirements:

(a) The applicant or dependent is 65 years of age and is eligible for Medicare;

(b) The applicant or dependent is eligible for and receiving a comprehensive health care benefit package under ORS Chapter 414 (Medicaid);

(c) The applicant or dependent is a patient or an inmate of a State correctional or mental institution;

(d) The applicant or dependent terminated OMIP coverage within the last twelve (12) months for a reason other than becoming eligible for health care benefits under Medicaid, including non-payment of OMIP premiums;

(e) The applicant or dependent received $2,000,000 in OMIP benefits under a prior OMIP policy(s);

(f) As of the effective date of OMIP coverage, the applicant or dependent is covered by health insurance or a self-insurance arrangement that is substantially equivalent to OMIP coverage;

(g) A public entity or a health care provider pays or reimburses the OMIP premiums for the applicant or dependent for the sole purpose of reducing the financial loss or obligation of that entity or provider;

(h) A business with two or more employees employs the applicant or the dependent and an insurance agent or insurance company directed the applicant to apply for OMIP coverage for the purpose of separating the applicant or dependent from health insurance benefits offered or provided in connection with the employer;

(i) The dependent is 23 years of age or older and is not mentally or physically incapacitated;

(j) The dependent is under 23 years of age but there is a court order requiring that someone other than the applicant provide insurance for the dependent;

(k) The dependent is under 23 years of age but is married, independent, or is not a full-time student in an accredited institution of higher education.

(l) Rules 443-002-0060(3)(a) through (k) are applicable except where they may conflict with federal rules regarding applicants who qualify under the Federal Health Coverage Tax Credit (HCTC) and are eligible for subsidy under the Federal Trade Act of 2002. In such circumstances, section 35 (f) of subpart C, Part IV subchapter A of chapter 1 of the Internal Revenue Code, effective for taxable years beginning after December 31, 2001, shall prevail over the OMIP rules (a) through (k) above.

(4) Applicants must submit proof of eligibility for pool coverage together with the application. Proof of eligibility consists of the following:

(a) Proof of residency must be established with one of the following documents:

(A) A current valid Oregon driver’s license or identification card issued by the Oregon Department of Motor Vehicles.

(B) A current valid Oregon voter registration card.

(C) A copy of the prior year’s Oregon income tax return that includes applicant’s name and current address.

(D) A dated rental agreement that shows the applicant’s current residence address, which identifies the applicant as the current tenant and includes the signature of both the applicant and the landlord.

(E) A utility bill listing applicant’s name, current residence address, and current dates of service.

(F) Any other document deemed appropriate by the Administering Insurer.

(b) If applying for pool coverage due to medical eligibility, proof of medical eligibility must be established with one of the following:

(A) A letter from an insurance company dated within the last six (6) months declining applicant for individual health insurance coverage due to health reasons; or

(B) A letter from an insurance company dated within the last six (6) months terminating applicant for individual health insurance coverage due to health reasons and not for non-payment of premiums; or

(C) The applicant attests on the OMIP application that they have one or more of the medical conditions listed on the OMIP application; or

(D) A letter from an insurance company dated within the last six (6) months offering insurance coverage but containing a waiver that excludes coverage for a specific medical condition; or

(E) A letter from an insurance company dated within the last six (6) months offering insurance coverage but limiting the applicant’s choice of plans due to the applicant’s specific medical condition(s); or

(F) Applicant has moved to Oregon permanently and is transferring from another state's high risk pool.

(c) If applying for pool coverage due to portability eligibility, proof of portability eligibility must be established by a Certificate of Coverage completed by the applicant's previous health insurer that provides the date coverage began and the date coverage ended. The coverage must have been in place for a period of not less than 180 days, and the applicant must apply for OMIP coverage within sixty-three (63) days of the termination date from the coverage.

(d) If applying for pool coverage due to being eligible for the Federal Trade Act of 2002 health insurance tax credit, an applicant will be required to establish proof of eligibility with the following documents:

(A) A letter from the Health Care Tax Credit attesting to eligibility.

(B) Certificate(s) of Creditable Coverage completed by your prior health insurance carrier(s) that provides the date coverage began and the date coverage ended. The coverage must have been in place for a period of not less than 90 days, and the most recent coverage must be within 63 days of application for enrollment in the plan.

Stat. Auth.: ORS 735.610(6), 735.615 & 735.616
Stats. Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 1-2005(Temp), f. & cert. ef. 8-26-05 thru 2-20-06; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

443-002-0070
Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration

Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration for the OMIP program are set forth in the OMIP individual benefit plan contracts as of January 1, 2006, the OMIP application as of January 1, 2006, the OMIP handbook as of January 1, 2006, the OMIP Premium Rates and Instructions pamphlet as of January 1, 2006, the OMIP Benefit Summary pamphlet as of January 1, 2006 and any applicable endorsements. These documents are hereby incorporated into this rule by reference.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats. Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

443-002-0080
Premiums

(1) Individuals eligible for OMIP due to Medical Eligibility or are eligible because they qualify for the health insurance tax credit under the Federal Trade Act of 2002 must pay a premium rate determined by the OMIP Board in accordance with ORS 735.625(4)(c), but not more than 125% of the applicable rate.

(2) Individuals eligible for OMIP due to Portability Eligibility pursuant to OAR 443-002-0060 must pay a premium rate not to exceed 100% of the applicable rate as determined by the OMIP Board in accordance with ORS 735.625(4)(c) and 735.616(3)(c) provided that they apply to OMIP within 63 days of the prior health benefit coverage termination date and that they had the prior group coverage in place for not less than 180 days.

(3) The Board will review the premium rates on an annual basis as defined in ORS 735.625.

(4) Premiums will be based on the age of the oldest enrolled person under the OMIP policy and are rated incrementally with 5-year age bands.

(5) Premiums may also be based on the geographic location in which an enrolled member lives.

Stat. Auth.: ORS 735.610(6). 735.616 & 735.625
Stats. Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 1-2005(Temp), f. & cert. ef. 8-26-05 thru 2-20-06; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

443-002-0090
Member Termination

(1) OMIP will terminate enrolled members and dependents automatically, without notice, if any of the following occurs:

(a) An enrolled member or dependent ceases to be an Oregon resident. Termination will become effective at the end of the month in which the member is no longer an Oregon resident. If OMIP becomes aware that a member is residing in another state for more than 180 days as evidenced by submitted claims, OMIP may request additional documentation from the member to verify Oregon residency. If OMIP determines that the member is not an Oregon resident as defined here, then OMIP may terminate coverage at the end of the month in which OMIP determines that individual is no longer an Oregon resident.

(b) An enrolled member or dependent reaches 65 years of age and becomes eligible for Medicare. Termination will become effective at the first of the month in which the member or dependent becomes eligible for Medicare, regardless of the period of time of enrollment in OMIP.

(c) An enrolled member becomes eligible for and enrolled in a comprehensive health care benefit package under ORS Chapter 414 (Medicaid). OMIP will terminate coverage effective on the date on which the member's coverage under Medicaid becomes effective. OMIP will prorate the monthly premium and refund any excess premium payments to the member.

(d) OMIP discovers that a public entity or health care provider pays the premiums for the enrolled member or dependent or reimburses him/her for premium payments for the sole purpose of reducing its own financial loss or obligation. Termination will take effect the date the public entity or health care provider began paying, or reimbursing the member for, the OMIP premium.

(e) An enrolled member is employed by a business with two or more employees and applied for OMIP coverage at the direction of an insurance agent or insurance company for the purpose of separating the member from health insurance benefits that the business offers or provides to its employees. Termination will take effect as of the effective date of OMIP coverage.

(f) OMIP discovers that an enrolled member had substantially equivalent health benefits as of the effective date of OMIP coverage. Termination will take effect as of the effective date of OMIP coverage. OMIP will attempt to recover any claims paid from the provider and request that the provider resubmit those to the other insurance company. The member will be responsible for reimbursing OMIP for any claims paid in the event OMIP is unable to recover payments from the providers. If OMIP is successful in recovering such claims from the provider or the member, OMIP will reimburse the member for any premiums paid from the effective date of OMIP coverage.

(g) OMIP has paid $2 million in benefits on behalf of an enrolled member or dependent. Termination will take effect at the end of the month in which the member or dependent reaches $2 million in benefits. Claim payments, however, will cease at $2million in paid benefits.

(h) An enrolled member becomes an inpatient or inmate at a State of Oregon correctional or mental institution as defined under ORS 179.321. Termination will take effect the date in which the member became an inpatient or inmate.

(i) OMIP discovers that an enrolled member made a material misrepresentation or omission on the application or enrollment form.

(A) If the member has been enrolled with OMIP for two years or less, OMIP may rescind coverage as of the fist day it went into effect.

(B) If the member has been enrolled with OMIP over two years, OMIP may rescind coverage from the beginning, refuse to renew coverage, or deny or reduce a claim only if the material misstatement or misrepresentation was fraudulent.

(j) An enrolled member misuses the provider network by being disruptive, unruly or abusive in a way that threatens the physical health or well-being of health care staff and seriously impairs the ability of the carrier or its providers to provide service to that member. Termination will take effect at the end of the term for which the member has paid premium.

(k) An enrolled dependent turns 23 years of age and is not mentally or physically incapacitated. Termination will take effect at the end of the month in which the dependent reached his/her 23rd birthday.

(l) An enrolled dependent is under 23 years of age but there is a court order requiring that someone other than the applicant provide insurance for the child. Termination will take effect at the end of the month in which the court order takes effect.

(m) An enrolled dependent is under 23 years of age but is married, independent, or is not a full time student in an accredited institution of higher education. Termination will take effect at the end of the month in which the dependent marries, becomes independent or is no longer a full time student in an accredited institution of higher education.

(n) For all enrolled dependents, on the last day of the month in which the enrolled primary member turns 65 and is eligible for Medicare, or dies. The Administering Insurer will notify enrolled dependents in writing of their health insurance options. They must request an extension of coverage in writing within 30 days of receiving the notice of termination.

(o) An enrolled member fails to pay the premium by the premium due date.

(A) The Administering Insurer will provide the enrolled member a 31 day grace period after the premium due date.

(B) Ten (10) days before the end of the grace period, the Administering Insurer will notify the member in writing that it did not receive the premium and that it will terminate the contract as of the premium due date if it does not receive thepremium by the end of the applicable grace period. The Administering Insurer will send the notice by first class mail to the member's last known address.

(2) A member may voluntarily request that OMIP terminate coverage at the end of any period during which the member has paid premiums. The member must submit to the Administering Insurer a 30-day advance writ-

ten notice to terminate. A member may also terminate coverage by not paying the premium for the next term.

(3) Once a member terminates, that member may not reenroll in OMIP for a period of 12 months. An exception to this exists when a member qualifies to requests suspension of OMIP coverage under OAR 443-002-0100 or a member meets one of the exception criteria listed under OAR 443-002-0095.

Stat. Auth.: ORS 735.610(6) & 735.615
Stats. Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

443-002-0095
Policy Exception to the OMIP 12-Month Waiting Period

OMIP may make the following exceptions to allow an individual to re-enroll in OMIP without satisfying the 12-month waiting period after their OMIP coverage has terminated.

(1) An individual is enrolled in OMIP and leaves OMIP for Group insurance but abruptly loses the Group insurance (reasons for loss could be closure or bankruptcy of company, loss of job for any reason, spouses loss of job or divorce from spouse if dependent) and because they have not had the new Group insurance in place long enough, does not qualify for Cobra or Portability coverage. In this circumstance OMIP staff may allow the individual to re-enroll in OMIP. This individual would need to provide OMIP with the proof of the other coverage, provide proof that they have no Cobra or Portability available, would need to come back to OMIP within 60 days of losing the other coverage, and enroll into OMIP as of the date they lost the other coverage. The individual would be reinstated with credits for their prior coverage and would re-enroll under the eligibility category in which they left.

(2) An individual is enrolled in OMIP and leaves OMIP to accept a job out of state with Group insurance but abruptly loses the Group insurance (reasons for loss could be closure or bankruptcy of company, loss of job for any reason, spouses loss of job or divorce from spouse if dependent) and because they have not had the new Group insurance in place long enough, does not qualify for Cobra or Portability coverage. In this circumstance, if the individual moves back to Oregon, OMIP staff may allow the individual to re-enroll in OMIP. This individual would need to provide OMIP with the proof of the other coverage, provide proof of their Oregon residency, would need to come to OMIP within 60 days of losing the out of state group coverage, and enroll into OMIP as of the date they lost the other coverage. The individual would be reinstated with credits for their prior coverage and would reenroll under the eligibility category in which they left.

(3) An individual is enrolled in OMIP and leaves OMIP for individual insurance but abruptly loses the individual insurance because the insurance company has dissolved and that insurance company is not required by law to offer portability. In this circumstance OMIP staff may allow the individual to re-enroll in OMIP. This individual would need to provide OMIP with the proof of the other coverage, provide proof that they have no Portability available, would need to come back to OMIP within 60 days of losing the other coverage, and enroll into OMIP as of the date they lost the other coverage. The individual would be reinstated with credits for their prior coverage and would re-enroll under the eligibility category in which they left.

(4) An individual is enrolled in OMIP and loses their OMIP coverage because of an error made by OMIP staff regarding their Sure Pay monthly bank deduction. The error must be proven to be the fault of OMIP staff beyond a reasonable doubt. The error cannot be because the member failed to provide OMIP banking information, failed to have sufficient funds, or failed to inform OMIP of their new banking institution. The burden of proof shall be placed solely on the OMIP member. If it is proven that the error was made by OMIP staff, then OMIP shall reinstate the individual as of the date they lost the OMIP coverage due to non pay, all past due premiums will need to be paid up to date via a manual check, and the individual shall re-enroll under the same eligibility category in which they left.

Stat. Auth.: ORS 735.610(6) & 735.615
Stats. Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

443-002-0110
Coordination of Benefits

If a member who is already enrolled in OMIP later becomes eligible for other individual or group coverage the member may request that OMIP continue his/her coverage, in addition to the other coverage.

(1) The effective date of the other coverage must have taken place AFTER the member enrolled in OMIP.

(2) In all instances, the other coverage will become the primary payer and OMIP will become the secondary payer.

(3) The member must pay full OMIP premiums, in addition to the premiums for the other coverage.

(4) The other insurance cannot be Medicaid (Oregon Health Plan/OHP).

(5) The other insurance cannot be Medicare, regardless of the period of time of enrollment in OMIP.

(6) OMIP may retroactively pursue claim payments that it made as the primary payer, from the other insurance company as of the effective date of the other coverage.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats. Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

443-002-0120
Effective Dates

(1) Effective dates for medical eligible applicants and their eligible dependents that are listed on the application shall be the first day of the month after the Administering Insurer has accepted and approved the application for enrollment.

(2) Effective dates for portability eligible applicants and federal Health Coverage Tax Credit (HCTC) applicants and their eligible dependents that are listed on the application shall be the first day after their previous group health plan ended.

(3) The Administering Insurer will inform applicants of their acceptance for OMIP coverage by sending a premium notice, identification card and policy contract.

(4) If an applicant fails to return the premium when requested, the Administering Insurer will reject the application as if the applicant were never effective or enrolled.

(5) If the Administering Insurer determines that an applicant or dependents of an applicant are not eligible for the program, the Administering Insurer will inform the applicant by sending the applicant a letter explaining the reason for the denial.

Stat. Auth.: ORS 735.610(6) & 735.625
Stats Implemented: ORS 735.600 - 735.650
Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06

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

Rule Caption: Adoption of Department of Justice's Model Rules for Rulemaking in effect on January 1, 2006.
Adm. Order No.: WCD 1-2006
Filed with Sec. of State: 1-13-2006
Certified to be Effective: 1-17-06
Notice Publication Date:
Rules Amended: 436-001-0003, 436-001-0005
Subject: The director hereby adopts the Department of Justice's Model Rules for Rulemaking, OAR 137-001-0005 through 137-001-0100, in effect on January 1, 2006, for rulemaking actions of the Workers' Compensation Division.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns2state.or.us. Rules are available on the internet: http://www.wcd.oregon.gov/policy/rules/rules.html

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-001-0003
Applicability and Purpose

(1) This rule division establishes supplemental procedures governing rulemaking and hearings, and carries out the provisions of ORS Chapters 183 and 656.

(2) These rules apply to hearings on matters within the director's jurisdiction that are held on or after January 2, 2006. In general, the rules of the Workers' Compensation Board, in OAR chapter 438, apply to the conduct of hearings, unless these rules provide otherwise.

(3) These rules apply to all division rulemaking on or after January 17, 2006.

(4) Unless otherwise obligated by statute, the director may waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704, 183 & OL 2005, Ch. 26
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2006, f. 1-13-06, cert. ef. 1-17-06

436-001-0005
Model Rules of Procedure Governing Rulemaking

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0100, in effect on January 1, 2006, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are adopted as the rules of procedure for rulemaking actions of the Workers' Compensation Division.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Workers' Compensation Division.]
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 183.325 - 183.410 & 656.704(2)
Hist.: WCD 5-1977(Admin)(Temp), f. & ef. 11-7-77; WCD 3-1978(Admin), f. & ef. 3-6-78; WCD 2-1982(Admin), f. 1-20-82, ef. 1-21-82; Renumbered from 436-090-0110 thru 436-090-0180, 5-1-85; WCD 3-1986, f. & ef. 5-15-86; WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 1-2005, f. & cert. ef. 1-14-05; WCD 1-2006, f. 1-13-06, cert. ef. 1-17-06

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Department of Corrections
Chapter 291

Adm. Order No.: DOC 16-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Adopted: 291-047-0021, 291-047-0061, 291-047-0065, 291-047-0070, 291-047-0075, 291-047-0080, 291-047-0085, 291-047-0090, 291-047-0095, 291-047-0100, 291-047-0105, 291-047-0110
Rules Amended: 291-047-0005, 291-047-0010
Rules Repealed: 291-047-0020, 291-047-0025
Rules Ren. & Amend: 291-047-0030 to 291-047-0115, 291-047-0035 to 291-047-0120, 291-047-0040 to 291-047-0125, 291-047-0045 to 291-047-0130, 291-047-0050 to 291-047-0135, 291-047-0055 to 291-047-0140
Subject: These rule amendments are necessary to implement 2005 Oregon Laws, Ch 439 (HB 2141) relating to the assignment and transfer of Department of Corrections inmates to a state mental hospital listed in ORS 426.010 for evaluation and treatment. Other non-substantive housekeeping revisions have been made to update terminology and correct statute references.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-047-0005
Authority, Purpose and Policy

(l) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 423.020, 423.030, 423.075 and 2005 Or Laws, Ch 439.

(2) Purpose: This rule prescribes procedures by which inmates of Department of Corrections facilities may be transferred to a state mental hospital listed in ORS 426.010.

(3) Policy: It is the policy of the Department of Corrections to establish procedures to provide for the best possible evaluation, treatment and return or release to inmates, to and from a state mental hospital in accordance with ORS 179.473, 179.478, 179.479 and 2005 Oregon Laws, Ch 439.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: CD 38, f. 1-28-77, ef. 2-1-77; CD 10-1979, f. & ef. 4-23-79; Renumbered from 291-40-250; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 1-1983(Temp), f. & ef. 1-4-83; CD 14-1983, f. & ef. 4-1-83; CD 14-1984, f. & ef. 7-20-84; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; DOC 8-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06; DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0010
Definitions

(l) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(3) Mentally Ill Inmate: An inmate who, because of a mental disorder, is one or more of the following:

(a) Dangerous to self or others.

(b) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(c) An inmate who:

(A) Is chronically mentally ill, as defined in ORS 426.495;

(B) Within the previous three years, has twice been placed in a hospital or approved inpatient facility by the Department of Human Services under ORS 426.060;

(C) Is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in subparagraph (B) above; and

(D) Unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the inmate will become a person described under either or both subparagraph (A) or (B) above.

(4) State Mental Hospital: As defined in ORS 426.010. Except as otherwise ordered by the Department of Human Services pursuant to ORS 179.325, the Oregon State Hospital in Salem, Marion County, and the Blue Mountain Recovery Center in Pendleton, Umatilla County, shall be used as state hospitals for the care and treatment of mentally ill persons who are assigned to the care of such institutions.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: CD 38, f. 1-28-77, ef. 2-1-77; CD 10-1979, f. & ef. 4-23-79; Renumbered from 291-40-255; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 1-1984(Temp), f. & ef. 2-17-84; CD 14-1984, f. & ef. 7-20-84; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; DOC 8-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06; DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0021
Administrative Transfers (Mentally Ill Inmates)

(l) The Administrator of the Department of Corrections Counseling and Treatment Services Unit/designee may request the Superintendent/designee of a state mental hospital listed in ORS 426.010 to accept a transfer of a mentally ill inmate to a state mental hospital pursuant to these rules.

(2) An inmate may be transferred to a state mental hospital for stabilization and evaluation for mental health treatment for a period not to exceed 30 days unless the transfer is extended pursuant to a hearing conducted in accordance with these rules.

(3) If space is available and the Superintendent/designee of the state mental hospital approves, the inmate shall be transferred.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 8-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06; DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0061
Hearings Process

(1) The Department of Human Services shall provide for an administrative commitment hearing conducted by a hearings officer employed or under contract with the Department of Corrections for administrative commitment or extension of the transfer of the inmate if:

(a) The Department of Human Services determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the Department of Human Services needs more than 30 days to stabilize or evaluate the inmate for treatment; and

(b) The inmate does not consent to the administrative commitment or an extension of the transfer.

(c) Inmates in the legal custody of the Department of Corrections and in the physical custody of the Oregon Youth Authority (OYA) will be administratively committed through an OYA hearing, pursuant to OAR 416-425-0020. Inmates in OYA physical custody will be transferred directly from an OYA facility to a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the Department of Human Services and returned directly to the OYA facility.

(2) It is the responsibility of the Superintendent/designee of the Oregon State Hospital to notify the hearings officer of the need for a hearing and to provide him or her with a transfer request containing the evidence justifying such action.

(3) The hearing shall be conducted by an independent hearings officer.

(4) The hearings officer shall not have participated in any previous way in the assessment process.

(5) The hearings officer may pose questions during the hearing.

(6) The evidence considered by the hearings officer will be of such reliability as would be considered by reasonable persons in the conduct of their serious affairs.

(7) When confidential informant testimony is submitted to the hearings officer, the identity of the informant and the verbatim statement of the

informant shall be revealed to the hearings officer in writing, but shall remain confidential.

(8) In order for the hearings officer to rely on the testimony of a confidential informant, information must be submitted to the hearings officer from which the hearings officer can find that the informant is a person who can be believed or that the information provided in the case at issue is truthful.

(9) At the conclusion of the hearing, the hearings officer will deliberate and determine whether by clear and convincing evidence that the inmate is a mentally ill person as defined in ORS 426.005 and will be administratively committed involuntarily to a state mental hospital. The hearings officer may postpone the rendering of a decision for a reasonable period of time, not to exceed three working days from the date of hearing, for the purpose of reviewing the evidence.

(10) An inmate subject to an administrative commitment to a state mental hospital has the rights to which persons are entitled under ORS 179.485.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0065
Representation

(1) In all cases, the inmate is entitled to:

(a) Speak in his or her own behalf;

(b) Be present at all stages of the hearing process, except when the hearings officer finds that to have the inmate present would present an immediate threat to facility security or safety of its staff or others. The reason(s) for the finding shall be part of the record.

(2) Assistance by a qualified and independent person approved by the hearings officer will be ordered upon a finding that assistance is necessary based upon the inmate's financial inability to provide an assistant, language barriers, or competence and capacity of the inmate to prepare a defense, to understand the proceedings, or to understand the rights available to him or her. An inmate subject to an administrative commitment hearing may not receive assistance from another inmate.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0070
Notice of Hearing

(1) The inmate shall be given written notice that an administrative commitment to a state mental hospital listed in ORS 426.010, a hospital or facility designated by the Department of Human Services, or an extension of the transfer is being considered by the Department of Corrections and the Department of Human Services.

(2) The notice will be provided by the hearings officer. Such notice must be provided far enough in advance of the hearing to permit the inmate to prepare for the hearing, but in no case shall notice be provided less than 24 hours prior to the hearing. The hearing shall take place no later than five days from the date of service of the notice.

(3) The notice shall include a copy of this rule.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0075
Investigation

(1) The inmate may request that an investigation be conducted. If an investigation is ordered, a designee of the hearings officer shall conduct the investigation. No person shall serve as an investigator who has participated in any previous way in the process.

(2) An investigation shall be conducted upon the inmate's request, if an investigation will assist in the resolution of the proceedings and the information sought is within the ability of the facility to procure or the inmate to provide with his or her own resources.

(3) The hearings officer may order an investigation on his or her own motion.

(4) The hearings officer shall allow the inmate access to the results of the investigation unless disclosure of the investigative results would constitute a threat to the safety and security of the facility, its staff or others, or to the orderly operation of the facility.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0080
Documents/Reports

(1) An inmate may present documents or reports during the hearing, subject to the exclusion and restrictions provided in these rules.

(2) The reporting employee or other agents of the Department of Corrections or Department of Human Services who are knowledgeable may submit to the hearings officer documents or reports in advance of the hearing that are being relied upon for the administrative commitment or extension of the transfer. Such evidence must be disclosed to the inmate during the hearing.

(3) The hearings officer may exclude documents or other evidence upon finding that such evidence would not assist in the resolution of the proceeding, or that such evidence would present an undue risk to the safety, security, and orderly operation of the facility. The reason(s) for exclusion shall be made part of the record.

(4) Notwithstanding subsection (2) of this rule, the hearings officer may classify documents or other evidence as confidential, and not disclose such evidence to the inmate, upon finding that disclosure of psychiatric or psychological information would constitute a danger to another individual, compromise the privacy of a confidential source, or would constitute an immediate and grave detriment to the treatment of the individual, if medically contraindicated by the treating physician or a licensed health care professional in the written account of the inmate. The reason(s) for classifying documents or other evidence as confidential shall be made part of the record.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0085
Witnesses

(1) The hearings officer shall direct the scheduling and taking of testimony of witnesses at the hearing. Witnesses may include inmates, employees, or other persons. Testimony may be taken in person, by telephone, or by written report or statement.

(2) Except as provided in this subsection, a hearings officer must provide an inmate or his or her representative with the opportunity to call witnesses to testify before the hearings officer and to confront and cross-examine witnesses called by the state. The hearings officer may deny the opportunity provided in this rule upon a finding of good cause. Good cause includes, but is not limited to, an undue risk to the safety, security, or orderly operation of the facility or an immediate and grave detriment to the treatment of the individual due to disclosure of psychiatric or psychological information, if medically contraindicated by the treating physician or a licensed health care professional. The reason(s) for any denial of the opportunity to call witnesses or confront and cross-examine witnesses shall be made part of the record.

(3) If the inmate intends to call witnesses, the inmate must request that the hearings officer schedule witnesses to present testimony at the hearing. The request must be submitted to the hearings officer in writing in advance of the hearing, and include a list of the person(s) the inmate requests to be called to testify and direct examination questions to be posed to each person. The hearings officer shall arrange for the taking of testimony from such witnesses as properly requested by the inmate, subject to the exclusions and restrictions provided in these rules. The hearings officer, rather than the inmate, shall pose questions submitted by the inmate, including questions on cross-examination, if any. The hearings officer may briefly recess the hearing to allow the inmate, the inmate's assistant, or both, an opportunity to prepare cross-examination questions.

(4) The hearings officer may limit testimony when it is cumulative or irrelevant.

(5) All questions which may assist in the resolution of the proceedings, as determined by the hearings officer, shall be posed. The reason(s) for not posing a question will be made part of the record.

(6) The hearings officer may, on his or her own motion, call witnesses to testify.

(7) The hearings officer may exclude a specific inmate or staff witness upon finding that the witness' testimony would not assist in the resolution of the proceeding or presents an immediate undue hazard to facility security. If a witness is excluded, the reason(s) shall be made part of the record.

(8) The hearings officer may exclude other persons as witnesses, after giving reasonable consideration to alternatives available for obtaining witness testimony, upon finding that the witness' testimony would not assist the hearings officer in the resolution of the proceeding, the witness' appearance at the hearing would present an undue risk to the safety, security, or orderly operation of the facility or the safety of the witness or others, or that

the witness is not reasonably available. The reason(s) for exclusion shall be made part of the record.

(9) Persons other than staff requested as witnesses may refuse to appear or testify.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0090
Postponement

(1) A hearing may be postponed by the hearings officer for good cause and for reasonable periods of time.

(2) Good cause includes, but is not limited to:

(a) Illness or unavailability of the inmate;

(b) Gathering of additional evidence; or

(c) Gathering of additional documentation.

(3) The reason(s) for the postponement shall be made part of the record.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0095
Findings

(1) No Justification: The hearings officer may find that the evidence does not support placement in a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the Department of Human Services, in which case the hearings officer will recommend that the inmate return to his or her former status with all rights and privileges of that status. The hearing record shall be processed with final action subject to review by the Superintendent/designee of the Oregon State Hospital. The findings must be on the merits. Technical or clerical errors in the writing or processing of the transfer request, or both, shall not be grounds for a no justification finding, unless there is substantial prejudice to the inmate.

(2) Justification: The hearings officer may find the evidence supports the inmate's placement in a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the Department of Human Services, in which case the hearings officer will so inform the inmate and recommend that the inmate's administrative commitment exceed 30 days. The hearing record shall be processed with final action subject to review by the Superintendent/designee of the Oregon State Hospital. An inmate's administrative commitment to a state mental hospital shall not exceed 180 days unless the commitment is renewed in a subsequent administrative hearing in accordance with these rules.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0100
Hearing Record

(1) Upon completion of a hearing, the hearings officer shall prepare and cause to be delivered to the Superintendent/designee of the Oregon State Hospital a hearing record within three days from the date of the hearing.

(2) The record of the formal hearing shall include:

(a) Examination reports;

(b) Notice of hearing and rights;

(c) Recording of hearing;

(d) Supporting material(s); and

(e) "Findings-of-Facts, Conclusions, and Recommendation" of the hearings officer.

(3) The hearings officer will retain the recording and forward to the Superintendent/designee of the Oregon State Hospital items (a), (b), (d), and (e) of this section.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0105
Superintendent's Review

(1) The results of any hearing held to place an inmate in a state mental hospital for administrative commitment will be reviewed and approved by the Superintendent/designee of the Oregon State Hospital.

(2) The Superintendent/designee of the Oregon State Hospital shall review the "Findings-of-Fact, Conclusions, and Recommendation" of the hearings officer, in terms of the following factors:

(a) Was there substantial compliance with this rule;

(b) Was the decision based on substantial information; and

(c) Was the decision proportionate to the information and consistent with the provisions of this rule?

(3) Within three days of the receipt of the hearings officer's report, the Superintendent/designee of the Oregon State Hospital shall enter an "order," which may:

(a) Affirm the recommendation;

(b) Modify the recommendation;

(c) Reverse the recommendation; or

(d) Reopen the hearing for the introduction and consideration of additional evidence.

(4) When the Superintendent/designee of the Oregon State Hospital takes action to modify or reverse, he or she must state the reason(s) in writing and immediately notify the inmate, hearings officer, and Administrator for Counseling and Treatment Services.

(5) When the Superintendent/designee of the Oregon State Hospital reopens the hearing under this rule, the hearings officer shall, pursuant to these rules, conduct the reopened hearing and prepare an amended hearing record within three days of the reopened hearing. The Superintendent/designee of the Oregon State Hospital shall review the hearing officer's recommendation and enter an amended "order," which may affirm, modify, or reverse the hearing officer's recommendation.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0110
Extension of Transfer

(1) If the Department of Human Services determines that the administrative commitment must exceed 180 days in order to stabilize the inmate, the administrative commitment must be renewed in a subsequent administrative commitment hearing held in accordance with these rules.

(2) Notwithstanding this rule, an administrative commitment may not continue beyond the term of incarceration to which the inmate was sentenced.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0115
Handling of Inmate Money and Personal Property

(l) When an inmate is transferred to a state mental hospital, the Department of Corrections shall send a check for the balance of the inmate's account to the business office of the state mental hospital.

(2) The inmate's personal property shall be transferred from the Department of Corrections facility in accordance with standards and limitations set by the state mental hospital to which the inmate is transferred.

(3) When the inmate is returned to a Department of Corrections facility, the inmate's money and personal property, as allowed by the Department of Corrections rules for Personal Property (Inmate) (OAR 291-117) and Trust Accounts (Inmate) (OAR 291-158), will be returned with the inmate. All property not allowed under the Department of Corrections rules for Personal Property (Inmate) shall be handled, controlled and disposed of in accordance with Department of Human Services rules (OAR 309-108-000 through 309-108-0020).

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: CD 38, f. 1-28-77, ef. 2-1-77; CD 10-1979, f. & ef. 4-23-79; Renumbered from 291-040-0275; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 14-1984, f. & ef. 7-20-84; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; Renumbered from 291-047-0030, DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0120
Visiting Privileges

(l) When an inmate is transferred to a state mental hospital, the Department of Corrections facility shall provide a copy of the inmate's approved list of visitors.

(2) All visitors shall be approved according to the state mental hospital's procedure.

(3) When an inmate is returned to a Department of Corrections facility, any new names added to the list will be subject to review and approval according to the Department of Corrections rule on Visiting (Inmate) (OAR 291-127) before admission of new visitors will be allowed.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439

Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: CD 38, f. 1-28-77, ef. 2-1-77; CD 10-1979, f. & ef. 4-23-79; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; Renumbered from 291-047-0035, DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0125
Short-Term Transitional Leaves, Emergency Leaves, and Supervised Trips

When an inmate is administratively transferred to a state mental hospital, no short-term transitional leaves, emergency leaves, or supervised trips shall be approved by the state mental hospital without approval of the functional unit manager of the Department of Corrections facility.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: CD 10-1979, f. & ef. 4-23-79; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 14-1984, f. & ef. 7-20-84; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; Renumbered from 291-047-0040, DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0130
Releases From a State Mental Hospital

An inmate who is transferred to a state mental hospital may be discharged and transferred back to a Department of Corrections facility for one of the following reasons:

(1) Completion of treatment;

(2) He/she could receive mental health services within the Department of Corrections, and there was a mutually agreed upon continuity of care place developed by the state mental hospital and the Administrator of the Department of Corrections Counseling and Treatment Services Unit/designee; or

(3) He/she does not meet the requirements to continue treatment at a state mental hospital.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: CD 10-1979, f. & ef. 4-23-79; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 1-1983(Temp), f. & ef. 1-4-83; CD 14-1983, f. & ef. 4-1-83; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; Renumbered from 291-047-0045, DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0135
Reporting of Unusual Incidents

Reporting of unusual incidents involving inmates administratively transferred to a state mental hospital shall be handled in accordance with the Department of Corrections policy on Unusual Incident Reporting Process.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: CD 10-1979, f. & ef. 4-23-79; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 26-1985, f. & ef. 8-16-85; CD 1-1994, f. 1-10-94, cert. ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; Renumbered from 291-047-0050, DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

291-047-0140
Confidentiality/Sharing of Information

(l) Department of Corrections records and other inmate information shall not be available to inmates or persons not employed by, nor under contract to, the Department of Human Services.

(2) Department of Human Services records and information shall be handled in accordance with ORS 179.495, 179.505, 192.501, 192.502, 192.505 and 42 CFR Part 2 relating to confidentiality of medical treatment records.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.477, 179.478, 179.479, 423.020, 423.030 & 423.075, OL 2005, Ch. 439
Hist.: CD 10-1979, f. & ef. 4-23-79; CD 20-1979(Temp), f. & ef. 10-23-79; CD 9-1980, f. & ef. 4-1-80; CD 14-1984, f. & ef. 7-20-84; CD 1-1994, f. 1-10-94, cert ef. 1-18-94; DOC 5-2000, f. & cert. ef. 1-21-00; Renumbered from 291-047-0055, DOC 16-2005, f. 12-30-05, cert. ef. 1-1-06

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Notice Publication Date: 7-1-05, 8-1-05
Rules Amended: 291-063-0010, 291-063-0016, 291-063-0030, 291-063-0050
Subject: These rule amendments are necessary to update the eligibility requirements for inmates that may be approved for short-term transitional leave or emergency leave, and clarify that leave conditions for an inmate on short-term transitional leave will replicate or may hold the inmate to a higher standard that post-prison supervision conditions.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-063-0010
Definitions

(1) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Emergency Leave: A leave of ten days duration or less within the state for the specific purposes listed in 291-063-0050(2)(a) where the inmate is expected to return to the releasing facility.

(3) Employee: Any person employed full-time, part-time or under temporary appointment by the Department of Corrections.

(4) Enter Parole/Probation Record (EPR): A record on the Law Enforcement Data System (LEDS) which identifies an inmate who is in the community on parole, probation, post-prison supervision, short-term transitional leave, or emergency leave exceeding five days.

(5) Immediate Family Member: Husband, wife, father, mother, sister, brother, daughter/son, and grandparents including step-relationships of such.

(6) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(7) Releasing Authority: The functional unit manager or designee of the correctional facility from which the inmate is to be or has been released on short-term transitional leave, supervised trip or emergency leave.

(8) Short-Term Transitional Leave: A leave for a period not to exceed 30 days preceding an established projected release date which allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community. The department may grant a transitional leave of up to 90 days for inmates participating in an alternative incarceration program in accordance with ORS 421.500 and the department's rule on Alternative Incarceration Programs (OAR 291-062).

(9) Supervised Trip: Any nonroutine trip outside a Department of Corrections facility within the State of Oregon which is supervised by an employee of the Department of Corrections or a person authorized to supervise or maintain custody of persons outside of correctional facilities.

Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06

291-063-0016
Procedures

(1) Eligibility Requirements:

(a) An inmate must be incarcerated for six months, including applicable county jail time credits, before being eligible for short-term transitional leave.

(b) Any person serving a sentence for a crime committed prior to November 1, 1989, shall not be eligible for short-term transitional leave.

(c) Persons incarcerated for parole revocation sanctions are not eligible for short-term transitional leave pursuant to ORS 421.168(1) and 144.108(3)(b).

(d) Persons incarcerated for post-prison supervision revocation sanctions are not eligible for short-term transitional leave pursuant to ORS 421.168(1) and 144.108(3)(b). However, such persons are eligible for emergency leave pursuant to ORS 421.166 and 144.108(3).

(e) Under the provisions of ORS 144.260, any inmate sentenced on or after December 4, 1986, require that a notification be distributed to the sentencing judge, district attorney, and sheriff 30 days prior to unescorted release from physical custody. Upon request, victims will be notified in the same manner.

(f) Any person serving a sentence under the provisions of ORS 137.635 shall not be eligible for short-term transitional leave.

(g) Any person serving a sentence under the provisions of ORS 161.610 shall not be eligible for short-term transitional leave until the person has served the minimum incarceration term imposed by the court less earned time under ORS 421.121.

(h) Any person serving a sentence under the provisions of ORS 163.105 for aggravated murder committed on or after November 1, 1989, shall not be eligible for short-term transitional leave. The person shall not be eligible for short-term transitional leave even after completion of the

minimum incarceration term imposed by the court, or if the Board of Parole and Post Prison Supervision converts the sentence to "life with possibility of parole, release to post-prison supervision, or work release."

(i) Any person serving a sentence under the provisions of ORS 163.115 for murder:

(A) Committed on or after November 1, 1989, and prior to April 1, 1995, shall not be eligible for short-term transitional leave until the person has served the minimum incarceration term imposed by the court less earned time under ORS 421.121;

(B) Committed on or after April 1, 1995 and prior to June 30, 1995, shall not be eligible for short-term transitional leave until the person has served the minimum incarceration term imposed by the court less earned time under ORS 421.121; or

(C) Committed on or after June 30, 1995, shall not be eligible for short-term transitional leave. The person shall not be eligible for short-term transitional leave even after completion of the minimum incarceration term imposed by the court, or if the Board of Parole and Post Prison Supervision converts the sentence to "life with possibility of parole, release to post-prison supervision, or work release."

(j) Any person serving a sentence under the provisions of ORS 137.700 or 137.707 for a crime:

(A) Committed prior to December 5, 1996, shall not be allowed short-term transitional leave until completion of the mandatory minimum incarceration term; or

(B) Committed on or after December 5, 1996, shall not be allowed short-term transitional leave until completion of the mandatory minimum incarceration term and only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(k) Any person serving a sentence under the provisions of ORS 137.712 for Robbery II, Kidnapping II, or Assault II committed:

(A) On or after April 1, 1995 and prior to December 5, 1996 is eligible for short-term transitional leave.

(B) On or after December 5, 1996 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(l) Any person serving a sentence under the provisions of ORS 137.712 for Manslaughter II committed on or after October 23, 1999 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(m) Any person serving a sentence under the provisions of ORS 137.712 for Rape II, Sodomy II, Unlawful Sexual Penetration II, or Sex Abuse 1 committed on or after January 1, 2002 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(n) Any person serving a sentence under the provisions of ORS 161.725 to 161.737 (dangerous offenders) for a crime committed on or after November 1, 1989 shall not be eligible for short-term transitional leave during service of the required minimum term of incarceration (determinate sentence) imposed by the court. The person shall not be eligible for short-term transitional leave even after completion of the required minimum term of incarceration (determinate sentence) even if the Board of Parole and Post Prison Supervision finds that the condition that made the person dangerous is absent or in remission and sets a post-prison supervision release date.

(o) If otherwise eligible under Oregon law, any person serving a sentence for a crime committed on or after December 5, 1996, shall be eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(2) Criteria: In order for an inmate to be approved for any form of leave, he/she must meet the following criteria:

(a) Be classified as minimum custody in accordance with the Department of Corrections rule on Classification (Inmate) (OAR 291-104);

(b) Assessed by staff to have a limited risk to re-offend, or otherwise not be a threat to the community;

(c) Minimal potential for adverse community reactions;

(d) Acceptable performance in the completion of correctional programming to address assessed needs and reduce the risk of future criminal behavior;

(e) Be in suitable physical and mental condition; and

(g) Institution conduct and program compliance warrant leave consideration.

(3) The supervising community corrections office must review and approve any transitional leave release plan.

(4) The district attorney's office in the sentencing jurisdiction shall be consulted regarding any transitional leave release plan, and objections to a proposed early release shall be taken into consideration.

Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Hist.: DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06

291-063-0030
Approval of Short-Term Transitional Leaves

(1) Short-term transitional leaves may be granted from any Department of Corrections facility with proper approval of the releasing authority.

(2) Application:

(a) The inmate may initiate the short-term transitional leave process by filling out the appropriate Short-Term Transitional Leave Plan and submitting it to the assigned correctional counselor or designated staff member.

(b) Short-term transitional leave may be granted for the purpose of obtaining employment, education, treatment, housing, or other transitional opportunity in the community to which the inmate will be released, and that a leave of up to 30 days is an essential part of the inmate's successful reintegration into the community. The need for short-term transitional leave shall be documented in the release plans submitted to the Board of Parole and Post-Prison Supervision.

(c) Correctional counselors or designated staff members will verify the information given and submit the leave recommendation and other relevant information to the releasing authority.

(3) Approval:

(a) The releasing authority or designee may grant a short-term transitional leave up to 30 days prior to the inmate's release to post-prison supervision to allow an inmate to participate in an approved release plan.

(b) Transitional leaves allowing travel outside the boundaries of the State of Oregon must be authorized in advance through Interstate Compact transfer procedures. Prior to the inmate leaving the state, the assigned counselor or designated staff member will notify the local authorities of the inmate's proposed presence in the area including address and dates.

(c) No short-term transitional leave will be granted to allow the inmate to reside with a Department of Corrections employee, contractor, or volunteer unless the inmate is an immediate family member of the employee pursuant to ORS 144.108(3)(b).

(d) The releasing authority or designee will stipulate the special conditions necessary to enhance community safety. Short-term transitional leave conditions will replicate as much as possible post-prison supervision conditions. Short-term transitional leave conditions may hold an inmate to a higher standard than post-prison supervision.

(e) Inmates without resources may apply for subsidy monies in accordance with the Department of Corrections rule on Release Subsidies (OAR 291-157).

(4) Release Conditions:

(a) Obey all laws: state, local, and federal.

(b) Conform to reasonable expectations of acceptable community behavior.

(c) Abstain from the use of alcohol, any illegal drug, or other dangerous substance and submit to drug urinalysis or breathalyzer testing as directed.

(d) Submit to search of person, automobile or residence by Department of Corrections, law enforcement, or community corrections agents.

(e) Return immediately to any designated Department of Corrections facility when so directed by the releasing authority or designee.

(f) Conform to the stipulations of a written transitional release plan and/or post-prison supervision release plan.

(g) Conform to any additional special conditions imposed by the releasing authority or designee.

(h) All expenses shall be borne by the inmate unless otherwise specifically authorized. Inmates placed on short-term transitional leave are responsible for costs of their own medical care.

(5) Community Corrections Supervision:

(a) When an inmate has been approved for a transitional leave, the inmate report (release plan and related file material) will be made available to the proposed community corrections office providing supervision at least five working days prior to the release of the inmate.

(b) Assigned Community Corrections staff may, when deemed necessary, request the releasing authority modify an approved release plan or leave stipulation with written notice to the inmate and documentation to the file. Within ten days after the releasing authority's approval to modify, the inmate may appeal to the Assistant Director of Institutions the changes to his/her release plan or stipulation.

Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06

291-063-0050
Emergency Leaves

Emergency leaves may be granted by any Department of Corrections facility with proper approval of the releasing authority. The same eligibility requirements that apply to short-term transitional leave in OAR 291-063-0016 also apply to emergency leave, other than persons incarcerated for post-prison supervision revocation sanctions are not eligible for short-term transitional leave pursuant to ORS 421.168(1) and 144.108(3)(b). However, such persons are eligible for emergency leave pursuant to ORS 421.166 and 144.108(3).

(1) Application:

(a) The inmate may apply for a leave by filling out an appropriate application and submitting it to the assigned counselor or designated staff member.

(b) Applications must be submitted in sufficient time for staff to review and verify the information provided.

(c) Counselors or designated staff members will verify the information given and submit the necessary document and/or other relevant information for the releasing authority.

(2) Approval:

(a) Emergency Leaves: Any releasing authority may grant emergency leaves for the following reasons:

(A) To visit a terminally ill family member if the member lives within the state.

(B) To visit a gravely ill child of the inmate if the child lives within the state.

(C) To attend the funeral or view the remains of an immediate family member if in the state.

(b) The duration of the emergency leave shall be restricted to only the time necessary to accomplish the purpose of the leave.

(c) Emergency leave will not be granted in the company of a Department of Corrections employee or volunteer unless the inmate is an immediate family member of the employee or volunteer.

(d) In approving an emergency leave, the releasing authority will stipulate conditions of release necessary for approval of the emergency leave.

(e) Inmates requesting non-emergency medical treatment while on emergency leave shall return to the releasing facility for examination and treatment if necessary.

(3) Expenses: Funds to cover expenses of any leave must be available in the inmate's account before leave may be granted, unless otherwise specifically authorized by the releasing authority. Any funds received designated for this purpose will not be used to reduce any indebtedness.

(4) Community Corrections Monitoring: When an emergency leave exceeds five days, the releasing authority or his/her designee must arrange with Community Corrections staff for monitoring of the inmate while the inmate is in the community. Upon departure from the facility, an EPR shall be initiated by the releasing facility.

(a) Assigned community corrections staff may, when deemed necessary, request that the releasing authority modify leave stipulations or release plan with written prior notice to the inmate and documentation to the file.

(b) Within ten days of the releasing authority's approval to modify, the inmate may appeal to the Assistant Director of Institutions the changes in leave stipulations or release plan.

(5) Emergency Leave Violations: Violations of the conditions or stipulations of an emergency leave constitute the basis for disciplinary action which will be handled in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(a) Community Corrections staff have the authority to detain any inmate on emergency leave status and lodge him/her in a local jail pending investigation and/or return to a Department of Corrections intake facility.

(b) In the event the decision is made to remove an inmate from emergency leave status and return him/her to the releasing facility, the responsibility for return will be as follows:

(A) Inmates who have been apprehended out-of-state will be returned to a Department of Corrections intake facility.

(B) Inmates who have been removed from emergency leaves will be returned to the releasing facility.

(C) If the inmate fails to report as instructed, the supervising officer will immediately investigate the circumstances and report the incident to the releasing authority or designee in accordance with the Department of Corrections policy on Unusual Incident Reporting Process, #40.1.6.

(D) If the inmate fails to report or return to the releasing facility as instructed, a warrant will be issue in accordance with the Department of Corrections policy on Escape Notification, #70.1.1.

Stat. Auth.: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Stats Implemented: ORS 179.040, 421.166, 421.168, 423.020, 423.030 & 423.075
Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03, Renumbered from 291-063-0025; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06

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Department of Energy
Chapter 330

Adm. Order No.: DOE 1-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 10-1-05
Rules Amended: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130
Subject: • Hybrid vehicles: Changes were made to the rules to take into account introduction of new hybrid models. The new definition: A vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system.

• **Building controls:** Clarification was made in the definition of building controls to ensure energy efficiency. The new definition: Systems that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section 16(b)(D) of this rule.

• **Boilers:** Update in rules regarding eligibility for boilers based on current technology.

• **Typo corrected:** Restoration in rules of the intended meaning of the rule that a final certification transferred to pass-through partner may not be revoked. This will align the rule with ORS 315.345 (4)(b). The word "not" was inadvertently omitted in the rules.

• Housekeeping changes were made including re-formatting definitions for clarification and changing language to improve the application review process or other changes required to better meet the objectives of Oregon Revised Statute 469.185; 315.354; 315.356.
Rules Coordinator: Michael Grainey—(503) 378-5489

330-090-0105
What a BETC Is

A Business Energy Tax Credit may be received against owed Oregon income taxes for up to 35 percent of the cost of qualifying energy or conservation projects. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment. The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying energy or conservation projects. Oregon Administrative Rules chapter 330, division 90 applies to all Business Energy Tax Credit applications received by ODOE on or after January 1, 2006.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06

330-090-0110
Definitions

(1) "Alternative Fuel": A motor vehicle fuel, other than gasoline or diesel, that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, ethanol, biodiesel, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A fueling facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) "Alternative Fuel Vehicle (AFV)": A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(4) "Applicant": A person who applies for a business energy tax credit under this section.

(a) It includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies that file an Oregon income tax return.

(b) It includes any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a pass-through partner that files an Oregon income tax return, or commit to select such a partner prior to final certification.

(c) It includes a contractor installing an alternative fueled vehicle fueling station in a dwelling.

(d) It does not include any business or non-profit corporation or cooperative that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin, sexual preference, or gender.

(5) "Building Code": Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(6) "Building Automation Controls Project": Systems that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as descibed in section 16(b)(D) of this rule.

(7) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)": A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(8) "Car Sharing Program" means a program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(9) "Commercial New Construction": A new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(10) "Commissioning": The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(11) "Commercial Process": An energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(12) "Commuter Parking Space" means a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(i) Separate from the lease for the business premises.

(ii) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(13) "Completed Application": Contains all of the information detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

(14) "Completed Project": An energy or conservation project for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(15) "Cooperative Agreement Organization": ODOE may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(16) "Cost": The capital costs and expenses the Director finds are needed to acquire, erect, build, or install an energy or conservation project under these rules. Cost for necessary features are not eligible. Costs financed with federal funds, other than costs financed by grants or tax credits excluded by ORS 315.356(1), may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses. Costs incurred by entities that are not taxpayers, including but not limited to, cooperatives, non-profit corporations, state or local governments including school districts, water districts, or any other special districts, may be eligible costs irrespective of their funding sources.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the project;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

(C) All materials and supplies needed for the project; and

(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and.

(ii) Costs for employee's work must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a project; or

(E) Other costs the Director excludes.

(c) If an energy or conservation project is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the project is the value paid for the project. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the project is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If an energy or conservation project serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. ODOE may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar project without energy efficient features.

(A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards for substantial energy savings.

(B) In other projects, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Excluding Research, Development & Demonstration, Sustainable Building Projects, recycling market development, and transportation projects, eligible project costs are limited by the following:

(A) All other projects must have fifteen-year simple payback period, except rental dwelling weatherization projects and solar photovoltaic projects that are limited to a 30-year simple payback. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) All other projects must have a simple payback of more than one year and less than the service life of the project,

(g) Costs for a Research, Development & Demonstration project also include costs of instruments, controls, and other equipment needed to monitor or audit the project. This equipment does not need to save or produce energy.

(h) Costs for space conditioning or individual metering energy or conservation project(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible project costs.. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(i) Costs for space and water heating equipment as defined in OAR 330-090-0110(18)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(j) Eligible costs for Transportation Projects include, but are not limited to, telecommuting, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, and parking cash out.

(k) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed a portion of the project cost based on similar projects, but not exceeding 40 percent of the purchase cost.

(l) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by ODOE prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(m) Sustainable Building Projects are exempt from the previous requirements of this definition, as the eligible cost for these projects is calculated using the schedule in OAR 330-090-0135.

(n) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization and the business energy tax credit may not exceed eligible costs.

(17) "Energy Department": The Department of Energy of the State of Oregon (ODOE).

(18) "Energy or Conservation Project": A renewable resource, recycling, recycling market development, conservation, transportation, alternative fuel vehicle, alternative fuel fueling station, a sustainable building project, or Research, Development & Demonstration project that complies with these rules and any applicable BETC Technical Requirements. It must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such project, except as allowed for a Research Development & Demonstration project, transportation or recycling market development or recycling project.

(a) An energy conservation measure (ECM), is an energy or conservation project if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Each unit or group of units of an energy or conservation project is an energy project by itself if:

(A) Each unit or group of units can save or produce a substantial amount of energy by itself; and

(B) The application and all licenses and permits for the project show it will consist of smaller units or groups of units; and

(C) The entire project complies with these rules; and

(D) It is connected to a load or end use or it displaces a connected load.

(c) Costs for an energy project needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(d) A space conditioning system(s) is an energy project if it provides substantial energy savings and complies with the BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(16)(e), of a fuel switching project will be allowed if the upgrade complies with these rules.

(e) A new electric motor that complies with the BETC Technical Requirements.

(f) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(g) Except as noted in (18)(d), an energy project does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC Technical Requirements.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(19) "Director": The Director of the Oregon Department of Energy or designees.

(20) "Final Certification": Final certificate issued upon completion of an approved BETC project.

(21) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(22) "Hybrid Electric Vehicle": A vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A list of vehicles known to meet these qualifications will be listed in the BETC Technical Requirements.

(23) "Industrial Process Energy Project": Energy project that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) Provides substantial energy savings from conservation, or;

(b) Provides substantial energy savings through the use of renewable resources; or

(c) Provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) Prepares or conditions alternative fuels for distribution or dispensing; or

(e) Increases industrial process efficiency through recycling market development; or

(f) Provides emergency replacement inventory of electric motors as defined in (18)(e) of this rule; but

(g) Does not include space conditioning for human comfort or general illumination.

(24) "Lease Contract": A contract between a lessor and a lessee of an energy or conservation project.

(a) In a lease-purchase contract the lessee owns the project at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the project through the life of the contract and is eligible for the BETC.

(25) "Least Cost Plan": A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(26) "Lighting Project": Means a project that will reduce the affected lighting system energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the project or that will be subsequently replaced will be recycled and, if so, how.

(27) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6-1/2 percent per year for those measures identified as cost effective in the

utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentive as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(28) “Mass Transit District”: A mass transit district included in ORS 184.675(7).

(29) “Metropolitan Service District”: A metropolitan service district included in ORS 184.675(7).

(30) “Necessary Feature”: A feature for which its primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes energy or conservation projects to comply with the Building Code;

(b) Complying with specific state or federal statues or requirements for pollution control or recycling project equipment. Recycling projects are necessary features except as noted in OAR 330-090-0110(43); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(31) “Net Present Value”: A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b).

(32) “Organization”:A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(33) “Parking Cash Out” means a cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(34) “Pass-through Option”: An option that allows a project owner to transfer the project’s tax credit eligibility to persons or businesses with an Oregon income tax liability in return for a cash payment equivalent to the net present value.

(35) “Pass-through Partner”: A person or business or persons or businesses with an Oregon income tax liability accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(36) “Preliminary certification”: Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(37) “Premium Efficient Appliance”: An appliance that has been certified by ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE’s Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE’s Premium Efficient Commercial Appliances Directory.

(38) “Project Eligible Square Footage”: For the purpose of calculating the tax credit amount for a Sustainable Building Project, project eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area of parking structures or parking structure elements of the project. It does not include exterior square footage beneath overhangs, awnings, canopies, walkways or unconditioned plaza areas beneath conditioned portions of the building.

(39) “Project Operator”: The person or people to whom the applicant gives authority to manage a project. Such person or people will be the applicant’s agent for all reasons related to the project once its development begins.

(40) “Project Owner”: An applicant who purchases and owns a qualified project.

(41) “Project Start”: The date the applicant chooses to write on the preliminary certificate application that meets one or more of the following criteria:

(a) A non-refundable deposit is placed on the energy or conservation project equipment;

(b) A purchase order is placed for the energy or conservation project equipment;

(c) A contract is executed for the design of the energy or conservation project;

(d) A document is executed that obligates the applicant to proceed with an energy or conservation project: or

(e) The date energy or conservation project information for a preliminary certification application is received by a cooperative agreement organization.

(42) “Public Purpose Organization”: The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(43) “Qualified Transit Pass Contract”: A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(44) “Recycling”: A process to change a waste product into a useable product or material. It includes refining used oil, chlorofluorocarbons, and halons. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream, although these waste remediation processes may be a part of an “Energy Project” where they include characteristics required to meet that definition.

(45) “Recycling Project”: Equipment used in a business for recycling in communities not subject to OAR 340-090-0030(2), or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any projects which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Equipment used for re-refining used oil, chlorofluorocarbons (CFC), and halons.

(b) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(c) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(46) “Recycling Market Development Project”: Projects that stimulate demand for recycled materials. It includes projects that meet one of the following criteria:

(a) The project uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(47) “Renewable Energy Resource”: A renewable energy resource:

(a) Does include, but is not limited to:

(A) Straw, forest slash, wood waste, or other wastes from forestland.

(B) Industrial waste, solar energy, wind power, water power, geothermal resources, or waste heat recovery.

(b) Does not include:

(A) A hydroelectric or geothermal project with more than one megawatt of installed capacity unless it is a Research, Development, and Demonstration project as defined in this section.

(B) Whole, living trees harvested for use as a fuel unless those trees have a growth cycle that will enable the trees to be replaced for use as a fuel during the service life of the project.

(48) “Renewable Resource Project”: Development that uses a renewable energy resource in a business or other eligible entity to make electricity, bio-gas, alcohol, or other fuel for sale; or, to replace a substantial amount of other fuels now used or that otherwise would be used.

(49) “Research, Development, and Demonstration Project (RD&D)”: A project that complies with (a) and (b):

(a) A project that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as an energy or conservation project in Oregon when commercialized, and complies with one or more of the following criteria:

(A) Research projects that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development projects that include the new manufacture or initiation of the capability to produce or deliver energy or conservation projects in Oregon, excluding development projects that increase established manufacturing or production capacity in Oregon;

(C) Demonstration projects that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology though pilot or production scale applications of technology;

(D) Innovative travel reduction projects that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. Examples include but are not limited to Travel Smart, Fareless Square, walking campaigns, Bike Commute Challenge, and Carpool Match

NW. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than $2 million annually in eligible costs for innovative travel reduction programs.

(E) Projects that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.

(F) Manufacturing facilities that produce renewable energy components such as wind, solar, geothermal, and other technologies.

(G) Projects in the Director's determination are likely to achieve Energy Office goals.

(b) A project that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(50) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation projects for travel.

(51) "Service Life": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Director for equipment not rated by ASHRAE. If the baseline system has exceeded its service life, only an incremental project will be considered eligible for a tax credit.

(52) "Simple Payback": The total eligible cost of an energy or conservation project divided by the expected yearly energy cost savings, stated in years.

(53) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy projects it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(54) "Substantial Energy Savings": Means that ODOE has determined that:

(a) An energy or conservation project, other than a lighting retrofit or sustainable building project and excluding Research Development & Demonstration, transportation, recycling market development, recycling project, will save at least 10 percent of the energy used in a given system or process;

(b) A lighting retrofit project will reduce the affected lighting system energy use by at least 25 percent;

(c) The project is a sustainable building project as defined in Definition 55 of this rule; or

(d) The project measures are defined in the BETC Technical Requirements as measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(55) "Sustainable Building Project": Means a building project as defined in section 8 of this rule that is rated and certified under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council. For a Sustainable Building Project to be eligible for a tax credit it must comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(56) "Transportation District": A transportation district included in ORS 184.675(7).

(57) "Transportation Facility": A transportation project that reduces energy used for traveling, including but not limited to traveling to and from work or school work-related travel or travel to obtain medical or other services. This includes, for purposes of this rule, commuting to and from class. Transportation facility includes, but is not limited to, a qualified transit pass contract or a transportation services contract, a car sharing program, and a parking cash out project.

(58) "Transportation Project": An energy or conservation project that reduces energy used for traveling, including but not limited to traveling to and from work or school work-related travel or travel to obtain medical or other services. A transportation project must meet one or more of the following criteria:

(a) Telecommuting/telework defined as working from home or from an office near home instead of commuting longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telecommuting equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per calendar year. Eligible costs include purchase and installation of new or used equipment at the telecommuting site. Telecommuting equipment may include computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director. Eligible cost for telecommuting projects does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telecommute site. Eligible cost for telecommuting does not include fees for maintenance and operation of any equipment; cost for equipment other than a modem at the principal place of business; office furniture and office supplies or training costs.

(b) Telecommuting for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting two or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per calendar year. Eligible cost includes purchase of vehicle(s). The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

(d) Transit passes used by an applicant's riders to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass project.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 days per calendar year. Eligible cost includes purchase of bicycles and equipment used to store bicycles.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation project and cannot exceed the cost of the transportation project. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 days per calendar year. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Parking cash out defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(59) "Transportation Provider" means a public, private, or non-profit entity that provides transportation services to members of the public.

(60) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(61) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(62) "Year": Calendar year.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06

330-090-0120
What Qualifies for a BETC

Both the party asking for a BETC and an energy or conservation project must comply with these standards.

(1) Standards for an Applicant — An applicant must:

(a) Be an applicant as defined by these rules; and

(b) File, have a pass-through partner that files, or commit to select such a partner prior to final certification, an Oregon income tax return; and

(c) Own or contract to buy an energy or conservation project; or

(d) Own or contract to buy or lease an Oregon firm that will use or lease the project or sell power from the project.

(2) Standards for an Energy or Conservation project -- An energy or conservation project must:

(a) Be an energy or conservation project as defined by these rules; and

(b) Comply with or have a variance from the land use laws of the city or county where the project will be; and

(c) Comply with all other local, federal, and state laws, including but not limited to the following:

(A) A water power energy project that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Also, if the project uses water from the Columbia River basin, it must comply with the Northwest Power Planning Council's Fish and Wildlife Program.

(B) A geothermal energy project must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(C) A biomass energy project must have required permits from the Oregon Department of Environmental Quality (DEQ).

(d) Include only costs allowed by these rules.

(3) Standards for Leased Energy or Conservation projects: A BETC may be granted to the owner of an energy or conservation project which leases the project for use in connection with a private or public sector building or activity. The lessee may operate the facility in conjunction with its own building or activity, or the building or activity of another as part of an energy service contract or other contractual agreement.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f.12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06

330-090-0130
How ODOE Handles a BETC

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification.

(b) To begin the review process for each stage, or to change the project during the review process, an applicant must notify ODOE in writing.

(c) A project owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(2) Preliminary Certification Preapproval: The Director may preapprove a preliminary certification for projects that ODOE has reviewed and determined to be otherwise qualified under these rules. Such projects may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a project owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Projects that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on an energy or conservation project begins.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a completed application.

(b) Within 120 days after a completed application is filed, the Director will notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) An applicant can re-submit an application that is denied if features of the project change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a final certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) A Completed Preliminary Certification Application Must Contain:

(a) The name, address, and phone number of the applicant and other parties involved in the project.

(b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).

(d) Facts that show the proposed use is an energy or conservation project under these rules.

(e) Project start and finish dates.

(f) Facts that describe the project, its costs, its expected life, and its simple payback in the detail required by ODOE.

(g) The facts documenting substantial energy savings or a description of products that will result from the project.

(h) The applicant's signature on the application attesting that it is correct.

(i) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.

(A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before project development begins. The Director may not grant final certification until all needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(j) For a renewable resource project, proof the resource level is adequate for a feasible project. Such proof includes data listed in (A) through (F). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for R&D projects.

(A) For a solar energy project: A sun chart and solar insolation data for the site.

(B) For a wind energy project: The average monthly wind speed for 12 consecutive months. Measure wind speed at the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or, measure wind speed at two heights, one at least 10 meters above ground.

(C) For a geothermal energy project (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power project: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy project: Data that show the resource is available in an amount that meets the project's energy needs.

(F) For a waste heat recovery project: A table showing how much waste heat is available and from what sources.

(k) The payment required by OAR 330-090-0150(2).

(l) For wind projects with turbines of 100 kW or less: A Test Report for each version of the turbine. The Test Report must be in a form specified by American Wind Energy Association standards.

(m) For alternative fuel vehicles: proof that the vehicle or conversion equipment is on DEQ's approved list, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(n) For alternative fuel vehicles: the number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(o) For alternative fuel fueling stations: description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) Other data the Director requires to assure a project complies with these rules.

(5) Preliminary Certification After Start of an Energy or Conservation Project:

(a) If an energy or conservation project has been started an applicant may file a written request with the Director for preliminary certification after project start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Director will approve, deny, or postpone preliminary certification. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The Director may approve preliminary certification after project start if:

(A) The request is in accord with OAR 330-090-0120; and

(B) Special circumstances make application for preliminary certification before project start up a hardship. Such circumstances include process delays beyond the applicant's control, project funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of project start date. Under extraordinary circumstances the Director may extend the waiver period provided the project serves the aims of the program.

(6) How Preliminary Certification Can be Revoked: The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A project is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with ODOE before project development starts.

(c) The project undergoes changes without the changes being approved under OAR 330-090-0130(7).

(7) Changes Between Preliminary Certification and Final Certification: To change a project that has a preliminary certification, the applicant must file a written request with the Director. The preliminary certification will not be amended unless the Director determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, project design, and materials. The change also must include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Director will decide if the changed project complies with these rules. The Director will provide written reasons for the decision.

(A) If it complies, the Director will issue an amended preliminary certification.

(B) If it does not comply, the Director will issue an order that denies the change. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The applicant must inform the Director in writing if it does not proceed with the project or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant planning to transfer the tax credit certificate to a Pass-through Partner will complete and file the Pass-though Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, the project owner will complete that section of the application by inserting "Not Identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The tax credit may not be transferred until the project owner has received the net present value in full and supplied ODOE with documentation of the payment, such as a copy of the front and back of the cancelled check.

(9) Final Certification Review Process and Application: An application for final certification must be filed after the project is complete.

(a) Within 30 days after a final certification application is filed, the Director will decide if it is complete. If it is not complete, the Director will inform the applicant in writing what is needed to make it complete. If it is complete, the Director will process the application.

(b) Within 60 days after a completed final certification application is filed, the Director will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Director will approve final certification. Final certification will state the amount of the tax credit approved. It may be up to 10 percent more than the amount approved in the preliminary certification. This contingency does not include any costs determined ineligible under OAR 330-090-0110(16)(b). For a Research, Development & Demonstration project, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within 6 months after the project begins to operate; and, if needed to make the project work better.

(B) If it does not comply, the Director will deny the final certification. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(D) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The project complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) A statement that the project remains in accord with local, state, and federal laws. This includes local land use laws.

(B) An account of the project costs, including prorated costs.

(i) If project costs are less than $50,000, the account may be records of project costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(16) unless required by the Director to supply verification from a certified public accountant, who is not otherwise employed by the project owner or pass-through partner; or

(ii) If the project costs are $50,000 or more, a certified public accountant, who is not otherwise employed by the project owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(16); or

(iii) For a sustainable building project, a copy of the project U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the BETC Technical Requirements and method of calculation will be accepted in lieu of project cost receipts.

(C) Proof the project is completed.

(D) If the project is leased, a copy of the lease.

(E) For Alternative Fuel Vehicles, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(F) Other data the Director finds are needed to assure a project complies with these rules.

(10) Changes After Final Certification:

(a) The applicant must inform the Director in writing if a project that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased project has ended. In that case, the Director will revoke the final certification. No later than 60 days after the Director issues an order revoking the preliminary certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a project may apply for final certification. The request must comply with OAR 330-090-0130(8). If it complies, the Director will issue a new final certification that

credits the amount approved in the old final certification not already claimed by the former owner or lessee.

(11) Basis for Revoking Tax Credit Benefits: For any reason listed in (a) through (d), the Director may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a project owner who has transferred the final certification to a pass-through partner. A final certification transferred to a pass-through partner may not be revoked.

(a) The applicant does not send the Director written notice that:

(A) The project has been moved; or

(B) Title to the project has been conveyed; or

(C) The project is not operating; or

(D) The term of a leased project has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.

(c) The applicant does not provide information about the project in a reasonable time after the Director requests it.

(d) Other changes in the project or its owner or lessor that violate these rules in the years for which the credit is claimed.

(12) Loss of Tax Credit Benefits: If the Director finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Director's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the project owner many not claim tax credits for the years remaining as of the date of the revocation. The Director may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full tax credit benefits, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Director may order the project owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Director may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full net present value, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(13) Request for Reconsideration: An applicant may request review of a decision under these rules by notifying the Director in writing no later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

(14) Inspections: After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the project. ODOE will schedule the inspection during normal working hours, following reasonable notice to the project operator.

(15) Public Access to Program Records:

(a) ODOE will not disclose data about a project, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) ODOE may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photocopies of requested records.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: DOE 2-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 10-1-05
Rules Amended: 330-070-0010, 330-070-0013, 330-070-0014, 330-070-0020, 330-070-0021, 330-070-0022, 330-070-0025, 330-070-0026, 330-070-0040, 330-070-0045, 330-070-0048, 330-070-0055, 330-070-0059, 330-070-0060, 330-070-0062, 330-070-0063, 330-070-0064, 330-070-0073, 330-070-0089, 330-070-0097
Subject: • **Senate Bill 31:** Senate Bill 31 which increases the tax credit for solar photovoltaic systems under the Residential Energy Tax Credit was implemented. For photovoltaic systems installed on or after November 4, 2005, the tax credit is $6,000 for four years ($1,500 maximum per year) not to exceed 50 percent of the cost of the system. Effective January 1, 2006, the solar photovoltaic tax credit has been placed in its own tax credit "category" so that a homeowner can take a tax credit for other AED devices in the same year.

• **Technician certification:** Certification requirements for solar, geothermal, duct, and heat pump/air conditioning diagnostics have been clarified and specified in the "Residential Energy Tax Credit Certification Requirements" document effective January 1, 2006.

• **Certification revocation:** The process for the Oregon Department of Energy to revoke solar, geothermal, duct and heat pump/air conditioning diagnostic technician certification is clarified.

• **Solar tax credits require tax-credit certified technician verification:** Solar electric and solar thermal technicians must now be certified by the Oregon Department of Energy for customers to qualify for a tax credit under the Residential Energy Tax Credit program. Homeowner-installed systems will be reviewed on a case-by-case basis by the Oregon Department of Energy.

• **Solar space heating:** Tax credit rules now differentiate between solar water heating based systems and passive solar space heating systems.

• **Hybrid vehicles:** In response to an increasing variety of hybrid vehicle technologies on the market, minimum technical standards were established. To qualify for the tax credit, a vehicle must be capable of drawing significant propulsion energy from a rechargeable on-board storage system with a minimum voltage or power capacity.

• **Clothes washers:** Eligibility standards for clothes washers have been updated to require a minimum Modified Energy Factor (MEF) of 1.60 and a maximum Water Factor (WF) of 8.50 gal/cubic foot/cycle.

• **Water heaters:** Eligibility standards for water heaters have been updated to require energy efficiency for units larger than 1-ton in capacity and smaller than 6-tons in capacity be based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by ODOE. Electric units of nominal 1-ton or less shall have an Energy Factor not less than 1.0; units with capacity greater than 1-ton and less than 6-tons shall have a COP rating of not less than 2.5. Natural gas, propane, or oil-fired units shall have an Energy Factor of 0.80 or greater as tested with natural gas fuel, and shall have a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour.

• **Air source heat pumps:** Specifications have been updated to have a minimum DOE Region IV HSPF rating of 8.5 until April 1, 2006 when they will need to have a minimum DOE Region IV HSPF rating of 9.0; have a minimum SEER rating at DOE "B" conditions of 13.0 until April 1, 2006 when this requirement will be deleted; and have a minimum EER rating at DOE "A" conditions of 11.0 until April 1, 2006 when this requirement will change to 12.0.

• **Air conditioning systems:** Specifications have been updated to have a minimum SEER rating at DOE "B" conditions of 14.5 until April 1, 2006, when this requirement will be deleted, and to have a minimum EER rating at DOE "A" conditions of 12.5 until April 1, 2006 when the minimum EER rating at DOE "A" conditions will be 13.0.

• **Wind systems:** To qualify for a tax credit, a system must meet all applicable industry standards published by the American Wind Energy Association (AWEA). The customer and ODOE must be given a copy of the documentation that shows that these standards have been met. The dealer or maker must provide a one-year written guarantee assuring the buyer a full refund or no-cost replacement of the system if the system does not meet all applicable standards published by AWEA. The guarantee shall provide that, in the event the system does not meet the AWEA standards, the refund or no-cost replacement shall be at the buyer's option. The first- year energy yield of wind AEDs must be at least 350 kWh. The requirement that

it deliver 200 watts with an annual average capacity factor of 20 percent has been deleted.

• Housekeeping changes were made including re-formatting definitions for clarification and changing language to improve the application review process or other changes required to better meet the objectives of Oregon Revised Statute 469.160 through 180.

Rules Coordinator: Michael Grainey—(503) 378-5489

330-070-0010
Purpose

(1) ORS 469.160 through 469.180 offer tax credits for Alternate Energy Devices (AEDs).

(2) These rules are OAR 330-070-0010 through 330-070-0097. They govern the way tax credits for AEDs will be granted or denied. None of these rules replace any building code requirements.

(3) Effective Date: January 1, 2006. All decisions made by the Oregon Department of Energy (ODOE) regarding AED eligibility, issuance of tax-credit technician certification, complaints regarding performance of tax-credit certified technician, revocation of technician tax-credit certification and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

(4) These rules apply to tax years beginning on or after January 1, 2006. For all prior tax years, the law and rules applicable to those years remain in full force.

(5) ODOE grants or denies AED tax credits. By granting a tax credit, neither ODOE nor the state implies that the AED will save more money than it will cost. Meeting standards in these rules does not assure that an AED is safe or reliable.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0013
Definitions

As used in OAR 330-070-0010 through 330-070-0097:

(1) "AED" — Alternative Energy Device.

(2) Active Solar Heating" — A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.

(3) "AFUE" (Annual Fuel Utilization Efficiency) — The efficiency rating for furnaces and boilers expressed as the ratio of the energy output to the energy (fuel) input, including part load and cycling effects, but not including fan or pump electrical energy use.

(4) "Alternative Energy Device" ("AED") — A device or system that reduces the amount of conventional energy used by a dwelling. AEDs include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; energy efficient appliances, energy efficient heating, ventilating and air conditioning systems; fuel cell systems; alternative fuel vehicles and related alternative fuel devices or wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.

(5) "Alternative Fuel" — Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director of ODOE.

(6) "Alternative Fuel Device" — An alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.

(7) "Applicant" — A person who applies for a residential alternative energy device tax credit under this section.

(a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or

(b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in ORS 757.015 that is designated by an applicant under OAR 330-070-0013(9)(a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant.

(c) Any other entity qualified to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant, as determined by ODOE.

(d) An individual or business that provides the tax credit pass-through amount to the eligible AED owner, and is assigned the tax credit by the AED owner.

(8) "ARI" — Air Conditioning and Refrigeration Institute.

(9) "ASHRAE" — American Society of Heating, Refrigerating and Air Conditioning Engineers.

(10) "AWEA" — American Wind Energy Association.

(11) "Btu" — British Thermal Unit.

(12) "CEF" — Energy Factor for Combined Systems. A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (space heating efficiency and combined efficiency being the other two) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(13) "CAFUE" — Annual Fuel Utilization Efficiency for Combined Systems. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (water heating efficiency and combined efficiency being the other two) does not count any standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

((14) "Consumer Disclosure" — A form approved and provided by ODOE describing some AEDs. The technician fills this form out and gives it to the buyer of an AED. It shows estimated energy savings of the AED, required conservation items, required maintenance, freeze protection information and other data required by ODOE. Exclusions: energy efficient appliances and alternative fuel devices.

(15) "COP" — Coefficient of Performance. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(16) "Department", "Energy Office", or "Office" — The Oregon Department of Energy.

(17) "Director" — Director of ODOE or the Director's representative.

(18) "Domestic Water Heating" — The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(19) "Dwelling" — means real or personal property inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(a) Principal residence —The dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trust or under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in the calendar year for which the credit is claimed;

(b) Secondary residence — Vacation property owned by the applicant; and

(c) Not qualifying — Primary or secondary residences do not include motor homes or recreational vehicles as defined in ORS 446.003.

(20) "EER" (Energy Efficiency Ratio) — A measure of a cooling system's instantaneous efficiency (cooling capacity divided by the power consumption), at DOE "A" test conditions, expressed in Btu/hr per watt.

(21) "Electric Load" — Appliance and lighting exclusive of any water or space heating use.

(22) "Energy Efficient Appliance" — A clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, space conditioning system, solar electric alternating current (AC) module, or any other major household appliance that has been certified by ODOE to have premium energy efficiency characteristics. Lists of certified energy efficient appliances are available from ODOE.

(23) "Energy Factor"(EF) — The non-dimensional efficiency rating for water heaters. It can be loosely translated as a percentage (e.g. EF 0.93 = 93 percent). A higher energy factor denotes better efficiency.

(24) "Energy Yield Chart" — Chart developed by ODOE showing first year energy yield of an AED.

(25) "Energy Recovery Ventilator" (ERV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(26) "EUI(FURNACE)" — The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Gas Appliance Manufacturers Association (GAMA) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment: 3.412 x EAE / (3.412 x EAE + 1,000 x EF) # 2.0 percent.

(27) "EUI(HERV)" — The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in

cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(28) "FERC" — Federal Energy Regulatory Commission.

(29) "First Year Energy Yield" — Usable energy produced under average conditions by an AED in one year. Expressed in kWh, usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(30) "Fuel Cell Stack" — The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(31) "Fuel Cell System" — A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy. Systems using reformed fossil fuels will also produce carbon dioxide

(32) "Ground Source Heat Pump" — A heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

(33) "Heating Season" — September 1 through March 31.

(34) "Heat Recovery Ventilator" (HRV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(35) "HSPF" (Heating Season Performance Factor) - A measure of the heating efficiency of a heat pump system over the entire heating season (heating accomplished divided by power used), expressed as a ratio of Btu per watt-hour.

(36) "HUD" — U.S. Department of Housing and Urban Development.

(37) "Hybrid Vehicle" — An alternative fuel vehicle which draws propulsion energy from on-board sources of stored energy which include both an internal combustion or heat engine and a rechargeable energy storage system.

(38) "Hydronic Space Heating System" — A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.

(39) "IREC" — Interstate Renewable Energy Council.

(40) "kWh" — kilowatt-hour; 1 kWh = 3413 BTUs for purposes of ODOE calculations.

(41) "Latent Recovery Moisture Transfer" (LRMT) — In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is transferred.

(42) "MCFC" — Molten carbonate fuel cell.

(43) "Modified Energy Factor" (MEF) — The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.

(44) "MM" — Million.

(45) "Net Cost" — What the applicant paid to design, acquire, build and install the AED. Net cost includes permit and inspection fees. Net cost may include the value of federal tax credits or utility incentives. Net cost does not include service contracts, rebates, discounts or refunds.

(46) "Net Generation" — The gross kWh produced minus internal losses and parasitic loads. The net generation is the amount available to serve dwelling loads, to provide to the utility, or both.

(47) "OG" — Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory. Operating guidelines shall be from the directory in effect at the date the rules are adopted.

(48) "ODOE" — Oregon Department of Energy.

(49) "Owner-Built" — An AED that is assembled and installed on an owner's personal property and with an owner's labor only.

(50) "Parasitic Power" — The electrical energy the system uses to operate.

(51) "Passive" — A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices. (52) "Passive Solar Space Heating" - This refers to a system or building design that collects and stores solar energy received directly though south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy. See section 330-070-0062 for details.

(53) "Pass-Through Amount" — The minimum amount required to be passed through to an eligible AED owner in exchange for the right to claim the tax credit. The pass-through amount shall be determined on an annual basis by the Director.

(54) "Pass-Through Provider" — An individual or business that pays the pass-through amount to an eligible system owner and applies for the tax credit in place of the system owner.

(55) "Pass-Through Verification" — Information collected by ODOE verifying that the approved pass-through amount has been provided, that the AED owner has relinquished his or her claim to a tax credit and has assigned the credit to the pass-through provider.

(56) "Peak Power Ratio" — In the case of a hybrid vehicle, the maximum power available from the electric motor providing propulsion energy when powered by the rechargeable energy storage system, divided by the total of such maximum power and the SAE net power of the internal combustion or heat engine.

(57) "Performance Checked Duct System"—A forced air duct system whose premium efficiency characteristics are that it has been tested for duct leakage by a tax credit certified technician using ODOE-approved testing procedures, and that it has been repaired or constructed using ODOE-approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked ducts are considered energy efficient appliances.

(58) "Performance Checked Heat Pumps and Air Conditioners"—A heat pump or air conditioner whose premium efficiency characteristics are that it has been tested using approved procedures and repaired or serviced as needed by a tax-credit certified technician to assure that refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy efficient appliances.

(59) "Placed in Service" — The date when an AED is ready and available to produce usable energy.

(60) "PV System" — A complete solar electric power system capable of delivering power to either the main or sub-panel in a residence. Necessary components include: solar electric modules, inverter, mounting system, and disconnection equipment.

(61) "SEER" (Seasonal Energy Efficiency Ratio) — a measure of the efficiency of a cooling system over the entire cooling season (cooling accomplished divided by power used), expressed in Btu/kWh.

(62) "Solar Attic Fan"— A device that uses photovoltaics to power a fan that pulls hot air out of an attic or roof space. Such a device may either be a complete, all-in-one unit or be comprised of a small photovoltaic panel and a DC powered attic fan designed to be run by photovoltaic panel.

(63) "Solar Domestic Water Heating System" — A configuration of solar collectors, pump, heat exchanger and storage tank designed to heat water. System types include forced circulation, integral collector storage, thermosyphon, and self-pumping. For the purpose of determining system yields, a configuration of components is considered a new system if changes occur in any of the following: type or size of collectors, heat exchanger type or effectiveness, size of storage tank, or system type.

(64) "Solar Electric AC Module" — A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(65) "SRCC" — Solar Rating and Certification Corporation.

(66) "Sensible Recovery Efficiency" (SRE) — In an HRV or ERV, the sensible (measurable) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(67) "STC" — Standard Test Conditions, which are 25 degrees Celsius cell temperature and 1000 watts per square meter.

(68) "Sunchart" — A chart or form issued or approved by ODOE showing the plotted path of the sun and any objects which block the sun from the AED. This shall include plant life and structures. The viewpoint shall be from the center of the lower edge of the collector. It shall show whether the plant life is made up of evergreen or leafy trees. If there is no shading on the AED, technicians shall indicate this in writing on the chart and shall include their signature and the date of the analysis.

(69) "System Certification" — Certification that an AED as described in the application meets criteria for the tax credit.

(70) "System Owner" — A person who owns the AED.

(71) "Tax-Credit Certified Technician"- A technician who has been approved by ODOE as sufficiently knowledgeable about the tax credit program. A tax-credit certified technician is responsible for assuring that the system installed is according to ODOE rules and verifying system installa-

tion quality and performance. A tax-credit certified technician must ensure that the applicant or system owner is knowledgeable about ODOE's AED rules.

(72) "Tax-Credit Listed Company" — A company that employs at least one tax-credit certified technician.

(73) "Total Solar Resource Fraction" — the fraction of usable solar energy that is received by the solar panel/collector throughout the year. This accounts for impacts due to external shading, collector tilt and collector orientation.

(74) "Unheated Spaces" — Attics, garages, and any space with an average ambient temperature of 50 degrees Fahrenheit or below during the heating season.

(75) "Used Equipment" — Any solar tank or collector which previously has been installed or any piece of equipment not under current manufacturers' warranty.

(76) "Wastewater Heat Recovery Device" — A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's hot water supply system.

(77) "Water Factor" (WF) — The measure of water efficiency in clothes washers. Measured in gallons per cubic foot of tub capacity, per cycle (gal/ft3/cycle).

(78) "Wind AED" — A wind alternative energy device. A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy. This includes turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0014
Pass-Through

(1) Any person or business that provides the approved tax credit pass-through amount to the person who owns the eligible energy device is entitled to claim the tax credit associated with that device in place of the system owner. Any person or business that provides the approved tax credit pass-through amount to the person who owns or constructs an eligible alternative fuel station is entitled to claim the tax credit associated with that device in place of the system owner or contractor.

(2) The pass-through amount shall be determined and published at least each year and may be periodically revised by the Director.

(3) In addition to other required information, verification information for tax credits obtained by pass-through providers shall include verification that the approved pass-through amount has been provided, and acknowledgement that the person originally eligible to receive a tax credit has relinquished his or her claim to the credit and has assigned the credit to the pass through provider.

Stat. Auth.: ORS 469.040, 469.160-180 & 469.710-720
Stats. Implemented: ORS 469.040, 469.160-180 & 469.710-720
Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0020
Who Is Eligible

(1) To qualify for a credit, a person must:

(a) Have an income tax liability in Oregon; and

(b) Purchase, construct, install and certify an AED in accordance with these rules (OAR 330-070-0010-330070-0097); and

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner; and

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a principal or secondary residence.

(2) If the basis for the credit is the installation of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(3) If the basis for the credit is a fueling station necessary to operate an alternative fuel vehicle, unless the certificate is transferred, the company that constructs the dwelling that incorporates the fueling station or who installs the fueling station in the dwelling may claim the credit. If the alternative energy device is an alternative fuel vehicle or related equipment, the credit must be claimed by the owner.

(4) A tax credit may be transferred. Any person that pays the present value of the tax credit for a qualified alternative energy device to the person who originally purchasesthe device shall be entitled to claim the credit in place of the original credit owner.

(5) For a qualified vehicle owned by lessor during period of first new use, the lessor may pass-through the right to claim the credit to the lessee exercising the first new use.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.160
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0021
Eligible Devices

(1) To earn a tax credit, the AED shall:

(a) Be a complete system. That is, the system must be able to collect, store, convert, monitor, and distribute energy to the dwelling it serves. Exception: Additions to existing AED systems, that are not pool, spa, or hot tub systems, shall be eligible when they increase the energy production capacity and the kWh saved by the system;

(b) Be a system that is built, installed, and operated in accord with ORS 469.160 through 469.180;

(c) Be a system with manufacturer's warranties against defects in products and materials;

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems. (OAR 330-070-0020; 330-070-0040 through 330-070-0055; and 330-070-0060 through 330-070-0097); and be one of the following:

(A) A system that uses solar energy;

(B) A ground water heat pump or ground loop AED;

(C) A renewable energy system that heats or cools space, heats water, or makes electricity;

(D) An energy efficient appliance including a wastewater heat recovery device;

(E) An alternative fuel device; vehicles licensed and registered for first new use on Oregon roadways and used vehicles being modified for first new use of a qualifying alternative fuel device are eligible for the tax credit.

(F) A fuel cell system; and

(G) Heat pump water heaters.

(2) These devices are not eligible for an AED tax credit:

(a) Standard efficiency furnaces;

(b) Standard backup heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood;

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;

(f) Swimming pools and hot tubs used to store heat;

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing spa and hot tub systems;

(i) Above ground, un-insulated swimming pools, spas and hot tubs;

(j) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(k) Used equipment;

(l) Repairs and maintenance of systems having received prior certification for an AED tax credit;

(m) Water source heat pump — A system that uses surface or subsurface water in a single pass without recirculation (open loop);

(n) Hydro systems; and

(o) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0022
Amount of Credit

(1) The amount of the AED tax credit is based on the first-year energy yield of an eligible AED. The energy yield basis for a solar tax credit may be adjusted by ODOE to account for less than optimal solar access.

(2) The amount of the AED tax credit shall not exceed the lesser of:

(a) $1,500 or the first-year energy yield of the AED in kWh multiplied by 60 cents for AEDs used for solar or geothermal space heating, cooling,

electrical energy production or domestic water heating for tax years beginning on or after January 1, 1998. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed must be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c) For each alternative fuel device, the credit allowed is 25 percent of the eligible cost of the alternative fuel device, not to exceed $750 for devices placed in service on or after January 1, 1998. Individual credit may be claimed for both an alternative fuel vehicle and an alternative fuel fueling system.

(A) Eligible cost is the difference in the cost between the conventional fueled vehicles of similar size with similar features and the cost of an alternative fuel vehicle and its charging or fueling systems.

(B) Conventional fuel vehicles manufactured by the same manufacturer with the same seating capacity and/or cab cubic volume or weight difference which are less than 20 percent, may be used to define eligible costs, provided that other features (upholstery, audio, suspension, body appointment) are similar.

(C) Low-speed alternative fuel vehicles for which no conventional fueled vehicle is available for comparison (seating cap/size/features) must use a minimum of $1,500 to determine cost difference for the alternative fueled vehicle.

(d) For fuel cell systems, $1,500 or the first year energy yield of the AED in kWh multiplied by 60 cents, for systems placed in service on or after January 1, 2000.

(e) For photovoltaic systems installed on or after November 4, 2005, $6,000 for four years ($1,500 per year) not to exceed 50 percent of the cost of the system.

(3) For an energy efficient appliance, the credit allowed under this section shall equal:

(a) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed $1,000 for each tax year on or after January 1, 1999. Total not to exceed 25 percent of the cost of the appliance.

(4) For photovoltaic systems installed on or after November 4, 2005, the credit allowed under this section shall equal: $3 per watt of the installed capacity measure in watts of direct current at industry standard test conditions. The credit shall be issued for the year in which it was installed in annual increments up to $1,500 over a four-year period. The amount of credit per year shall not exceed $1,500 and the total credit shall not exceed 50 percent of the cost of the system.

(5) The amount of the tax credit must not exceed the net cost of the AED to the applicant.

(6) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the net cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have net cost prorated. Net cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) ODOE may find an AED to be too large for a dwelling. In such case net cost must be prorated. Net cost must be based on the largest useful size of an AED for the dwelling. ODOE must determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and an addition may not exceed $1,500 per year.

(7) For purposes of the tax credit, the net eligible cost of the AED is only those costs necessary for the system to yield energy savings and must not include:

(a) Unpaid labor including the applicant's labor;

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

(g) Loan interest;

(h) Amounts from vendors of an AED that reduce its cost. These include rebates, discounts and refunds;

(i) Service contracts;

(j) Cost of moving a used AED from one site to another;

(k) Cost of repair or resale of a system;

(l) Any part of the purchase price which is optional, such as an extended warranty; and

(m) Delivery fees.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0025
Application for System Certification

(1) Applicants for the tax credit must get a system certification from ODOE.

(2) Applications for a system certification must be made in a form developed by ODOE:

(a) All applications must contain a statement that the system and technician or owner-builder will meet all federal, state and local requirements;

(b) All applications will request purchasers to provide social security numbers for use as an identification number in maintaining internal records. The purchaser's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) All applications must state:

(A) The net cost of the AED;

(B) The location of the AED;

(C) Estimated first-year energy yield of the AED by the technician or from the ODOE energy yield chart, (found in the ODOE AED System Directory), if any; and

(D) That the purchaser has received an operating manual for the AED. Exception: No operating manual is required for sunspaces or direct gain space heating systems.

(d) All applications must state that the technician agrees to make any changes required by ODOE for the system to comply with ORS 469.160 through 469.180;

(e) All applications must be signed by the purchaser and technician, if any, or, a form of electronic signature acceptable to ODOE shall be provided; and

(f) A technician or applicant must not give ODOE false or misleading information about an AED.

(3) System certification applications for solar water heating AEDs must contain:

(a) The number of collectors;

(b) The manufacturer and/or supplier;

(c) The collector dimensions and/or the net area of the collectors;

(d) The amount of heat storage;

(e) The system type;

(f) Declaration of SRCC certification status or equivalence as determined by ODOE;

(g) A description of the freeze protection for the system;

(h) A description of the over-heat protection for the system;

(i) The system model;

(j) Orientation and tilt of the collector;

(k) A sunchart for the collector location;

(l) A Consumer Disclosure signed by the applicant and technician or supplier, if any;

(m) A statement that the purchaser has received a copy of consumer information supplied by ODOE; and

(n) Any other data ODOE requires.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A sunchart for the collector location; and

(e) Any other data ODOE requires.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) A copy of the building permit plans;

(b) A copy of the window specifications used;

(c) The type and amount of thermal storage;

(d) A sunchart taken at the center of the solar glazing; and

(e) Any other data ODOE requires.

(6) System certification applications for photovoltaic AEDs must contain:

(a) The brand name of the module(s);

(b) The module(s) area;

(c) The rated DC output in watts of the module(s) under Standard Test Conditions (STC);

(d) A description of the storage provided if storage is a part of the system;

(e) Storage brand and model;

(f) Storage capacity in kWh;

(g) The brand name of the inverter if an inverter is part of the system;

(h) The capacity of the inverter;
(i) Orientation and tilt of the array;
(j) A sunchart of the array location; and
(k) Any other data ODOE requires.
(7) System certification applications for ground water heat pumps and ground loop AEDs must contain:
(a) For all systems connected to a well, data on the well including:
(A) Depth;
(B) Diameter (cased);
(C) Temperature;
(D) Static water level below grade;
(E) A copy of the well driller's log, if available; and
(F) Any other data ODOE requires.
(b) For systems connected to a heat pump:
(A) Brand name and model number of the heat pump;
(B) Rated output at the entering water temperature;
(C) Estimated system COP rated by ARI under Standard 325 -85 at an entering water temperature of 50 degrees Fahrenheit; and
(D) Any other data ODOE requires.
(c) For ground loop heat pump systems:
(A) All the information in subsection (7)(b) of this rule; and
(B) Brand name, rated output, estimated COP;
(C) Length and depth of the loop;
(D) Materials and spacing used;
(E) Type of heat transfer fluid; and
(F) Any other data ODOE requires.
(8) System certification applications for energy efficient appliances must contain:
(a) Taxpayer's name and principal address;
(b) Installation location by street address;
(c) The name of the dealer or licensed and bonded technician;
(d) The dealer's business location;
(e) The brand name, make, model number, capacity and/or size of the appliance;
(f) A signed copy of the sales agreement, which will include all of the following:
(A) Verification of purchaser's name and address; and
(B) Verification of model of appliance; and
(C) Verification of actual price paid for appliance.
(g) Certification of new equipment warranty; and
(h) Any other data ODOE requires.
(9) System certification applications for alternative fuel devices must contain:
(a) Taxpayer's name;
(b) Taxpayer i.d. or social security number;
(c) State of Oregon vehicle registration number;
(d) Installation location by street address;
(e) The name of the licensed and bonded company employing the technician;
(f) The company's business location;
(g) The brand name, make, model number, or component list of the AFD;
(h) A signed copy of the sales agreement, which will include all of the following:
(A) Verification of purchaser's name and address; and
(B) Verification of model of, or components used for AFD; and
(C) Verification of actual price paid for the AFD.
(i) Certification of new equipment warranty;
(j) An optional letter attached to the application declaring that the applicant designates an Investor Owned Utility (IOU) or other qualifying entity as the eligible recipient of the credit certificate on behalf of the project owner applicant that includes:
(A) Name, address, contact person, phone number, facsimile number of the IOU or designated qualifying party; and
(B) Signature, or form of electronic signature acceptable to ODOE, of an authorized representative of the IOU or other designated qualifying party stating willingness to accept the tax credit certificate; and
(k) Any other data ODOE requires.
(10) System certification applications for fuel cells shall provide information regarding:
(a) The rated fuel cell stack peak capacity, in kW;
(b) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);
(c) Whether or not the system is grid connected;
(d) The fuel used by the system;
(e) The type of fuel stack (PEM, PAFC, SOFC, etc.);
(f) An estimate of the average load, in kW, expected to be placed on the system;
(g) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;
(h) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and
(i) Any other data ODOE requires.
(11) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0026
Technician Tax Credit Certification

(1) Technicians may on a voluntary basis apply for ODOE tax- credit certification for a particular technology on an annual basis. Certification is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to ODOE rules, and verify system installation quality and performance.
(2) A tax-credit certified technician applies only to the following products:
(a) Solar water heating systems;
(b) Ground source heat pumps (geothermal);
(c) Photovoltaic systems;
(d) Performance-tested ducts; and
(e) Air source heat pumps/air conditioning systems.
(3) The tax-credit certified technician's status is based on the following:
(a) Knowledge and understanding of the tax credit program requirements and expectations;
(b) Ability to provide systems that are designed and installed with a focus on performance and longevity; and
(c) Ability to deal with both ODOE and consumers in a professional manner. Failure to meet any of these criteria are grounds from removal from being certified. (See Section 330-070-0045 (2).)
(4) Tax-credit certified technician status entitles a technician to:
(a) Inform the owner that he or she has attended an ODOE-required training class and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.
(b) Verify that installation of tax-credit qualified equipment and systems meet ODOE standards for performance and longevity.
(5) Tax-credit certified technician status requires that the technicians must follow ODOE requirements including:
(a) Duct and air-source heat pump/air conditioning technicians must acquire training required by the Director for providing the services necessary for that technology and pass a competency test with a score of 70 percent or above.
(b) Solar technicians must show licensure (North American Board of Certified Energy Practitioners-NABCEP or Limited Renewable Energy Technician — LRT for solar electric and Solar Thermal License (STL) for solar thermal) or pass a competency testing with a score of 70 or above for the technology. Until December 31, 2006, solar technicians may also demonstrate competency with proof of two 2005 installed systems in their technology that have been inspected and approved by the Energy Trust of Oregon.
(c) Geothermal technicians must show proof of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's training program or other training approved by the ODOE Director.
(d) Participate in ODOE tax-credit training and annual ODOE update telephone conference calls.
(e) Assure owner has user manual for equipment/system.
(f) Provide the customer with a completed application and a copy of the final itemized dated invoice for the system that is marked "inspected and paid for." Assure owner has a written full warranty for the system that lasts no less than 12 months after the system is installed. Maintain tax-credit certification status by completing the following technology-specific requirements: For solar technology — Complete at least two (2) hours of Oregon Solar Energy Industries Association (OSEIA)-approved solar-related training and either have submitted and approved two (2) tax credit applications for systems in technology in which technician is certified or score 70 percent or above on an ODOE competency test for appropriate solar

technology. For air source heat pumps/air conditioning — Maintain current requisite technical certification and licensing; complete and either have submitted and approved four (4) tax credit applications or score 70 percent or above on competency test. For performance tested duct systems — Have submitted and approved a minimum of four (4) tax credit applications or score 70 percent or above on competency test. For geothermal — Have submitted and approved a minimum of two (2) tax credit applications.

(6) Tax credits for installation of air source heat pumps/air conditioning systems, performance-tested ducts, geothermal systems, solar electric and solar thermal systems must be verified by an ODOE tax-credit certified technician. Homeowner-installed systems will be reviewed by ODOE on a case-by-case basis.

(7) A tax-credit certified technician must notify ODOE within 30 days if changes are made in any of the information in the certification application.

(8) ODOE may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. ODOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0040
Other Rules and Regulations

(1) AEDs must comply with all state, federal and local laws and rules that apply. These OARs change no one's responsibility to comply with such laws.

(2) The policy of the Department of Energy is:

(a) To accept the findings of local, state and federal agencies which license or permit projects to be built or run;

(b) To avoid influencing any of those agencies to approve or deny a license or a permit; and

(c) To provide facts from tax credit files to such agencies when asked.

(3) Each applicant must:

(a) Obtain each local, state, and federal permit and license that applies to a project;

(b) Agree to comply with the express terms and conditions of each permit and license; and

(c) Agree to comply with all state rules and laws that apply to the project.

(4) System certification and tax credit technician certifications are based on the applicant's promise that each needed local, state and federal license and permit has been or will be obtained. Failure to obtain those approvals will cause ODOE approval to be revoked.

(5) If any license or permit named in these rules does not apply to the project, the licensing or permitting agency must certify that the license or permit is not required. Exception: This does not apply to residential DHW, pool, spa and hot tub systems.

(6) AED technicians must install all systems in compliance with the system manufacturer's published specifications.

(7) ODOE must assign a yield for all solar domestic water heating systems. For systems approved by ODOE that are not SRCC OG-300 certified, ODOE must assign a yield based on requirements determined comparable to SRCC OG-300.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0045
Enforcement

(1) Applicant's actions that are cause for revocation of a residential alternate energy tax credit

(a) A system certification may be revoked pursuant to ORS 469.180 if the Director finds that:

(A) The applicant obtained the system certification by fraud or misrepresentation;

(B) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

(i) Failure to follow applicable standards;

(ii) Failure to comply with required codes or obtain required permits or inspections;

(iii) Return of the AED to the seller or installer for a refund;

(iv) Sale or removal of the device so that it no longer operates on the property of the applicant; or

(C) The applicant refuses to allow ODOE to inspect the AED after a reasonable written request by the Department. A reasonable request must allow applicant to choose a day within three weeks of the request from the Department.

(b) Following revocation, the applicant must forfeit the tax credit, and the Department of Revenue must proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) Technician's actions that are cause for revocation of technician's tax credit certification:

(a) A technician tax-credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the system or technician tax-credit certification was obtained by fraud or misrepresentation by the technician. The Director may find that fraud or misrepresentation occurred if:

(A) False statements were made regarding the technician's licenses held, products or warranties carried by the tax-credit certified technician's employing company, the company's range of product cost, personnel employed in the business, or any other item in the application for technician tax-credit certification as defined in OAR 330-070-0026.

(b) A technician tax-credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the technician's performance regarding sales or installation of the alternative energy device for which the technician is issued a tax credit certificate under ORS 469.170 does not meet industry standards. The Director may find that the technician's performance does not meet industry standards under the following conditions:

(A) The technician's employing company is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding; or

(B) The technician and/or employing company fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040; or

(C) The technician fails to install the AED system in compliance with standards adopted under OAR 330-070-0060 through 330-070-0097; or

(D) The technician fails to install the AED system in a professional manner; or

(E) The technician fails to install the AED system to comply with manufacturers' published specifications; or

(F) The technician and employing company fail to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation; or

(G) The technician and employing company fail to honor a warranty which they are contractually obligated to perform; and

(H) The technician and/or employing company fail to make corrections to remedy failure to comply with paragraphs (A) through (G) of this subsection requested by ODOE within 30 days of written notification from ODOE of the problem, unless a time extension is granted by ODOE.

(I) A tax credit for an AED sold or installed under the technician tax-credit certification is ordered revoked under subsection (2)(a) of this rule; or

(J) New information indicates that the AEDs installed under the technician tax-credit certification and his or her employing company do not meet eligibility requirements.

(c) A technician's tax-credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the technician or employing company has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the technician or employing company has misrepresented the tax credit program or the AED under the following conditions:

(A) The technician or employing company has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other misleading information about the program implemented under ORS 469.160 through 469.180; or

(B) The technician or employing company has misrepresented the nature of the performance of the AED or claimed savings in excess of those on a yield chart without providing accurate calculations to the customer and to ODOE to substantiate the yield. For geothermal heat pumps, the technician or employing company has claimed savings higher than other units of similar efficiency; or

(C) The technician or employing company has misrepresented the cost of a system. For example, the technician or employing company omits costs in the contract for features necessary for basic installation and/or

operation of the system and/or costs to comply with the AED eligibility under ORS 469.160 through 469.180; or

(D) The technician or employing company has misrepresented a competitor's product or service; and

(E) The technician or employing company fails to make corrections requested in writing by ODOE to remedy violations of (A) - (D) of this subsection within 30 days, unless more time is allowed by ODOE; or

(F) The technician or employing company fails to remedy the construction and/or warranty claim as directed by order of the Construction Contractors Board.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.180
Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0048
Administrative Process for Review and Revocation of Contractor Tax Credit Certification

(1) If ODOE receives a complaint, the tax-credit certified technician and employing company must be notified and given an opportunity to respond.

(a) If the complaint relates to issues that the Construction Contractors Board (CCB) has authority to resolve, the complaint must be referred to the CCB for resolution. The CCB generally has authority to address construction, warranty claims or complaints involving dishonest or fraudulent conduct. Failure to comply with the order of the CCB must be grounds for revocation of technician tax-credit certification or civil penalty.

(b) In all other cases, ODOE must evaluate the technician's or employing company's response and determine whether a violation occurred. ODOE must notify the technician and employing company of its determination and, if appropriate, the necessary remedy. ODOE must give the technician and employing company 30 days to remedy a violation. ODOE may grant the technician and employing company additional time where appropriate.

(2) If the technician and employing company do not take appropriate action within the time specified, ODOE must begin enforcement proceedings. An enforcement proceeding may be brought to revoke the technician tax-credit certification, remove company name from ODOE listing, and/or to impose a civil penalty.

(3) ODOE must commence an enforcement proceeding by sending the technician and employing company a notice of violation. The notice must describe the violation(s) and notify the technician and employing company of the proposed penalty (revocation and/or civil penalty).

(4) Civil Penalties: The technician and employing company may be subject to a civil penalty if a system certification or technician tax-credit certification is revoked by the Director. The amount of the penalty must be the total amount of tax relief estimated to have been provided to purchasers of the system for which a system or technician tax-credit certification is revoked under this rule.

(5) Before the Director imposes a penalty, the technician and/or employing company must be given 21 days in which to request a hearing pursuant to ORS 183.310-183.550 and the Attorney General's Uniform and Model Rules of Procedure, January 15, 2004 edition. The hearing will be to contest the revocation of a system or technician tax-credit certification based on actions listed under OAR 330-070-0045.

(6) Re-application: To reapply after the revocation of a technician tax-credit certification, the technician and employing company must prove to the satisfaction of ODOE that the problem causing revocation has been corrected. Revocation must be in effect for at least one year before that technician or employing company or any other firm with any of the same shareholders may reapply for certification.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.180
Hist.: DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0055
Guidelines for Consumer Information

(1) A tax credit certified technician must inform each buyer in simple terms:

(a) How to tell if the device is running right. Who to call if it is not;

(b) How to tell if the freeze protection is in effect. Who to call if it is not;

(c) What maintenance is needed, annually and long term;

(d) Who will honor warranties; and

(e) What are the conditions of the warranties including but not limited to how to start and keep warranties in force.

(2) A tax-credit certified technician or employing company must provide all clients with a copy of materials deemed necessary by the Director prior to sale of the system.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0059
Guidelines for Solar Pool and Spa AEDs

(1) Installations must be of professional quality, be installed according to manufacturer's instructions; comply with all applicable state, county, or local codes and regulations; and be verified by a ODOE tax-credit certified solar technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

(a) Clear instructions on how to monitor the system performance;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices; and

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs;

(3) Pool heating system designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Any building insulation disturbed due to the system installation must be restored to previous condition;

(d) Pool collector materials must come with a minimum 10-year full warranty (to ensure that equipment designed for temporary installation is not used).

(e) System must have a method to show that it is operating correctly. This equipment must be a permanent part of the system, not require any special tools, and be in an easily accessible location.

(f) Collector risers must follow the slope of the surface they are mounted on to ensure drainage for proper freeze protection.

(g) Pool collectors must be equal to not less than 40 percent of the pool surface area if equipped with swimming pool blanket or not less than 60 percent if no pool blanket is present.

(4) Spa heating system designs and installations must comply with the following additional requirements:

(a) System design must be approved by the Oregon Department of Energy. Approval is based on complete system design documentation and calculation of annual energy savings.

(b) Controls must be capable of maintaining safe spa temperatures.

(c) Spa or hot tub must be insulated with not less than R-15 perimeter and bottom insulation and have a cover rated to not less than R-5.

(5) ODOE will provide technicians with a simple means of estimating annual energy savings for a pool heating system. Spa heating system performance will be determined on a case-by-case basis. For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

(6) The costs listed in subsection (8)(a) through (h) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(7) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of monitors, meters and controls;

(d) The cost of photovoltaic devices used to supply electricity to parts of the system;

(e) Installation charges;

(f) Fees paid for design or building;

(g) The cost of swimming pool blankets, if they are installed with a solar pool heating system; and

(h) Up to $200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(8) The addition of more energy producing capacity to an existing solar pool heating system may be eligible for an AED tax credit if:

(a) The system addition increases first year energy yield; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(9) ODOE will calculate first year energy yield of a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition.

(a) ODOE will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED which received an AED tax credit in a prior year shall be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

(10) A tax credit for a system addition must count as a tax credit for the tax year in which the addition is placed in service. The total tax credit of current and previous year credits shall not exceed $1,500 per year.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0060
Guidelines for Solar Domestic Water Heating AEDs

(1) Installations must be of professional quality, comply with all applicable state, county, or local codes and regulations and be verified by an ODOE tax-credit certified solar technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must be plainly mounted/displayed on or near the solar storage or backup water-heating tank. These instructions must at a minimum include:

(a) Clear instructions on how to determine if the system is functioning properly;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices;

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs; and

(e) How to protect the system from overheating due to stagnation during periods when the system is not in use during the summer months.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures;

(d) Any building insulation disturbed due to the system installation must be restored to previous condition;

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system; and

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes. A minimum number of fittings must be used in the attic, and the fittings shall be copper or brass.

(g) Pipe materials (e.g. copper, PEX, polybutylene) must be capable of handling the temperature ranges that they will be exposed to (e.g. freezing or collector stagnation).

(4) Freeze protection must be provided for systems where the heat transfer fluid may freeze. The freeze protection method shall follow these guidelines:

(a) The method must be clearly stated in the owner's manual.

(b) The method must work in the absence of utility electric power.

(c) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(d) Recirculation is not an acceptable freeze protection measure, unless the collector used is a heat pipe type.

(e) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(f) Drain-down or manual drain systems for pools or spas must be designed for gravity draining of the collector and piping.

(g) Thermosyphon systems may not connect power to the electric element in roof-mounted tanks as a freeze protection or backup measure.

(5) The annual energy requirement for domestic water heating must be reduced by setting the water heater thermostat to 120 degrees F.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(c) Equipment meeting this requirement must:

(A) Be a permanent part of the system;

(B) Not require any special tools or equipment to monitor; and

(C) Be in an accessible location.

(7) The costs listed in subsection (8)(a) through (j) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(8) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges;

(g) Fees paid for design or building;

(h) The cost of swimming pool blankets, if they are installed with a solar pool heating system;

(i) The cost of hot water conservation measures installed with a water heating AED; and

(j) Up to $200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) ODOE will provide a table of estimated annual energy savings or "yield chart" for most OG-300 systems common to Oregon and R&D systems. Annual energy savings will be based on the annual performance simulations provided by the SRCC modified for conditions required under state law.

(a) OG-300 systems that meet ODOE approval do not have to be on the yield chart if there has been no request by a tax-credit certified technician that they appear on the yield chart.

(b) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent. Yields must be developed for each of the three weather zones defined by ODOE and updated at least annually.

(10) All systems must meet the standards established by the SRCC OG-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

(a) Temporary authorization will be granted to non-OG-300 systems under a special "Research & Development" status. ODOE will extend this temporary authorization for up to 12 systems of a specific design. The solar technician will need to submit a complete copy of the system design and operation documents provided to the consumer to ODOE for approval. ODOE shall determine that such system will perform well under the conditions it is designed for and will likely last in excess of 15 years without replacement of major components. Tax credit amounts under this status will be determined by ODOE based on 90 percent of the estimated annual energy output.

(b) Temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status providing the system manufacturer is currently applying for OG-300 certification from SRCC. ODOE will extend an unlimited quantity of systems to be installed in a 12-month period, providing ODOE has reviewed a copy of the SRCC application and determined it to be reasonably likely to achieve OG-300 certification within the 12-month period.

(11) System yields shown in the yield charts may be increased by a tax-credit certified technician providing they sign a statement of compliance provided by ODOE and meet the following storage tank insulation levels:

(a) A one tank/aux. tanks adjustment of +100 kWh applies to the tank in a solar water heating system that has only one storage tank, such as a thermally stratified active system or ICS systems or the auxiliary tank in

two tank systems. Such tanks generally have the ability to heat water by means other than solar energy. To qualify for this yield adjustment the tank must meet the insulation requirements as specified by ODOE.

(b) A solar tank adjustment of +100 kWh applies to the solar storage tank in a solar water heating system. Such a tank does not have a means of heating water other than solar energy and is almost always located upstream of the auxiliary tank. Because of their size and because they are usually not part of the original home design, they are generally located outside the conditioned space of the house. To qualify for this yield adjustment the tank must meet the insulation requirements as specified by ODOE.

(12) All technician tax-credit certified-installed systems must:

(a) Include an O&M manual which specifies installation instructions, operation instructions, maintenance plan, fluid quality, service and replacement parts, hazards, and warranty coverage;

(b) Provide clear labeling of on/off/bypass controls and safety issues;

(c) Have a means of indicating proper operation of the solar water heating system (flow indicators/meter or thermometers);

(d) Be installed to meet local building codes; and

(e) Have a tempering valve to prevent greater than 120 degree F. water downstream of the valve.

(13) Systems shall be installed with the OG-300 certification sticker located on the manual cover. The manual and any supporting documentation shall be placed in a waterproof, clear plastic bag located on or near the solar or domestic hot water heater.

(14) Owner-built and site-built domestic water heating systems are exempt from the testing requirements. ODOE will evaluate the system design and assign it a yield based on 50 percent of its estimated annual energy performance.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0062
Guidelines for Passive Solar Space Heating AEDs

(1) Installations must be of professional quality and comply with all applicable state, county or local codes and regulations.

(2) The estimated first year energy yield must be the net usable energy produced under average environmental conditions in one year.

(3) Passive solar space heating systems must produce energy savings equal to not less than 20 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit. Such systems must:

(a) Have sufficient solar access, not jeopardized by future buildings or tree growth;

(b) Provide usable heat for the heated space;

(c) Provide adequate thermal storage for solar heat gained;

(d) Prevent overheating of the heated space that requires mechanical space cooling; and

(e) In addition, sunspaces must:

(A) Have no backup heating device; and

(B) Be able to be isolated from the heated space.

(4) Determination of annual performance shall be based on one of the following approved methods:

(a) Using ODOE's prescriptive passive solar heating path to achieve 20 percent savings.

(b) Annual hourly simulation using an approved energy modeling software (e.g.Energy-10).

(c) Monitored data from system before and after installation of AED.

(5) Solar device costs eligible for passive space heating systems include:

(a) The cost of mass or water walls for thermal storage;

(b) The cost of movable window insulation that is part of a passive system. It must tightly seal on all sides of the window. It must also have an R- value of at least three;

(c) The cost of south-facing windows, if the requirements of section (4) of this rule are met; and

(d) The cost of passive heat distribution components.

(6) ODOE will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.170
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0063
Guidelines for Combined Active Solar Space and Domestic Water Heating AEDs

(1) Installations must be of professional quality, made to manufacturer's instructions, comply with all applicable state, county and local codes and regulations, and be verified by an ODOE tax-credit certified solar technician.

(2) Active solar space heating systems must produce energy savings equal to not less than 15 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit.

(3) The estimated first-year energy savings shall be based on the following:

(a) The house design prior to installation of the solar energy equipment, not a base code design or reference design.

(b) The total energy savings from both space heating and domestic hot water heating, with not less than 50 percent of the savings coming from solar heating.

(c) An annual solar utilization calculation method approved by the Director that accounts for the operating temperature of the energy storage and collector system and gives no credit for any insulation measures not directly associated with the solar AED.

(d) Typical residential occupancy setpoints and operating behavior. Savings will not be granted for consumer behavior options, with the exception of nighttime window insulation which will be evaluated at 50 percent of maximum effectiveness.

(4) Applicant must provide the following information:

(a) As-built to scale home drawing that indicates envelope shell insulation levels;

(b) Complete system design documentation with component list and controls sequence;

(c) Annual estimated savings calculations; and

(d) Solar equipment specifications and performance test data.

(5) Solar device costs eligible for the tax credit for active space heating systems include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters, and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges; and

(g) Fees paid for design or building.

(5) ODOE will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0064
Guildelines for Photovolatic AEDs

(1) Installations must be professional quality, comply with all applicable Oregon codes, comply with the requirements of the National Electric Code article 690, and be verified by an ODOE tax-credit certified solar technician.

(2) A photovoltaic tax credit for a system installed on or after November 4, 2005, shall be limited to $6,000 per PV system. The amount of the credit shall be based on $3 per watt. The maximum tax credit given in a calendar year is $1,500. If a system results in a tax credit larger than $1,500, the remainder will be applied on to the subsequent year until either the $6,000 limit or the total tax credit is provided.

(3) System size shall be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC).

(4) The minimum system size must be 200 Watts DC output under STC.

(5) Photovoltaic AED costs eligible for the tax credit include the cost of:

(a) Photovoltaic modules;

(b) Inverters;

(c) Storage systems and regulators;

(d) Monitors, meters, and controls;

(e) Wiring and framing materials;

(f) Trackers;

(g) Installation charges; and

(h) Permits and fees, including up to $200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(6) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.170
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0073
Guidelines for Energy Efficient Appliances and Alternative Fuel Devices

(1) Energy efficient appliances must meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be currently listed with ODOE as qualifying premium efficiency appliances.

(2) Where USDOE test procedures do not exist, ODOE will designate a nationally recognized test procedure that will apply instead.

(3) Clothes washers:

(a) For the purpose of this program, clothes washer efficiency performance is determined using the USDOE Appendix J1 test procedure for residential clothes washers in effect at the time the rules are adopted.

(b) Clothes washers shall have a minimum Modified Energy Factor (MEF) of 1.60 and a maximum Water Factor (WF) of 8.50 gal/cubic foot/cycle.

(4) Refrigerator-Freezers:

(a) Must have at least 20 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers;

(b) Must have a total net volume (sum of the fresh food compartment and freezer compartment volumes) of at least 12 cubic feet, but less than 30 cubic feet; and

(c) Must have a fully automatic defrost cycle.

(5) Dishwashers:

(a) Dishwashers must have an Energy Factor of 0.61 cycles/kWh or higher; and

(b) Effective January 1, 2004, dishwashers must have tax credit eligibility based on an Energy Factor derived from the DOE Dishwasher Test Procedure effective September 28, 2003.

(c) Effective August 2, 2004, dishwashers must have a maximum water use per cycle, as tested, of 6.5 gallons.

(6) Water Heating Appliances:

(a) Water heater efficiency requirements:

(A) Equipment efficiency requirements for units of nominal 1-ton or less capacity are based on the USDOE Energy Factor, as derived from the USDOE Appendix E test procedure for residential water heating equipment in effect at the time the rules are adopted. Efficiency requirements for units larger than 1-ton in capacity and smaller than 6-tons in capacity, are based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by ODOE.

(B) Electric units of nominal 1-ton or less shall have an Energy Factor not less than 1.0; units with capacity greater than 1-ton and less than 6-tons shall have a COP rating of not less than 2.5.

(C) Natural gas, propane, or oil-fired units shall have an Energy Factor of 0.80 or greater as tested with natural gas fuel, and shall have a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour.

(b) Combined space/water-heating system efficiency must be based on the water heating Energy Factor for Combined Systems (CEF) as derived from the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) 124-1991 test method. Water heaters that are part of a combined space and water heating system may not receive a tax credit for space heating efficiency as a boiler in addition to the tax credit as a water heating appliance.

(7) For Wastewater Heat Recovery Systems, field performance data submitted to and approved by ODOE must be the basis for tax credit qualification. The following rules also apply:

(a) The systems must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(8) Performance Checked Space Conditioning Duct Systems must meet the following requirements:

(a) All joints and seams in duct work outside the conditioned space must be sealed, when accessible, with mastics that meet NFPA class 1 requirements, that are UL 181 listed, and that meet ASTM standards C557 and C919-79.

(b) All closure systems must be applied according to the manufacturer's instructions or as specified by these standards.

(c) If the home serviced by the performance checked duct system is new, or the building envelope is being altered, the house must meet residential energy conservation requirements of the Oregon Structural Specialty Code or of the Oregon One and Two Family Dwelling Code in effect at the time the home is constructed or structurally altered.

(d) Duct leakage must be tested using ODOE-approved, calibrated duct testing equipment and ODOE approved testing protocols.

(e) Testing to verify that these standards have been achieved must be conducted by technicians approved by ODOE or by an ODOE-designated agent or representative.(f) In addition to general requirements (a) through (e), performance checked duct systems must meet situation specific standards for eligibility, materials, design, installation, air tightness and safety, as specified in the Oregon Department of Energy Premium Efficiency Duct System Standards, dated October 30, 2003.

(g) Measures eligible for the purpose of calculating a performance checked duct system tax credit include:

(A) New construction

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles;

(vi) Duct testing; and

(vii) Labor and materials for bringing duct systems inside heated space.

(B) New ducts in existing homes

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles; and

(vi) Duct testing.

(C) Duct repair and sealing/existing ducts in existing homes

(i) Duct sealing labor and materials;

(ii) Labor and materials for installing multiple returns;

(iii) Labor and materials for installing passive pressure relief grilles; and

(iv) Duct testing.

(h) To apply for a performance checked duct tax credit, the following information must be submitted in a form approved by ODOE:

(A) Application form;

(B) Test results worksheet for "new construction," "new duct systems in existing homes," or " duct repair and sealing"/existing ducts in existing homes, as applicable;

(C) Copies of heating and cooling load calculations and/or duct sizing calculations, as applicable, shall be made available to ODOE upon request; and

(D) Itemized invoice identifying measures detailed in (g).

(i) The amount of the tax credit for performance checked duct systems must be 25 percent of the eligible costs detailed in (g), up to $250.

(9) Performance Checked Heat Pumps and Central Air Conditioners must meet the following standards:

(a) Systems must be tested and serviced as needed to confirm correct refrigerant charge and air flow by technicians certified by ODOE or its approved agent, based on procedures approved by ODOE.

(b) Approved supplemental air flow test methods must be used, including: flow grid, duct blaster, strip heat, or flow hood. Supplemental air flow test results must include pre-repair and post repair air flow readings in cubic feet per minute, cfm.

(c) To verify electronically commutated motor (ECM) installation results, the wattage of the existing fan motor and new ECM fan motor must be measured using a wattmeter or by clocking the revenue meter using the following procedure:

(A) Turn off all circuit breakers except the breaker to the AC/HP air handler.

(B) Turn on the air handler fan (cooling speed).

(C) At the meter, use a stopwatch, and for a period of at least 90 seconds, count the number of revolutions of the wheel. Record seconds and number of revolutions.

(D) Record meter data: kWh and multiplier if any.

(E) Calculate the watt draw of the fan: Watts = [kWh x number of revolutions x multiplier x 3600]/seconds.

(d) Eligible measures must be confirmed by the system diagnostic tests using ODOE-approved protocols in use at the time of measure installation. Duplicate tax credits may not be claimed.

(e) Measures eligible for the purpose of calculating a performance checked heat pump/air conditioner tax credit include:

(A) System diagnostic tests;

(B) Adding or removing refrigerant when initial diagnostic tests indicate need for refrigerant adjustment and post repair tests indicate correct charge has been installed;

(C) Altering the duct system to improve air flow when initial diagnostic tests show low air flow and post repair tests show an air flow improvement of 10 percent or more;

(D) Cleaning the inside coil when initial diagnostic tests indicate low air flow and post repair tests show an air flow improvement of 10 percent or more; and

(E) Replacing an existing inside fan motor with an electronically commutated motor (ECM) when initial diagnostic tests show low air flow and tests after ECM installation show an air flow improvement of 10 percent or more.

(f) To apply for a performance checked heat pump/air conditioner tax credit, the following information must be submitted in a form approved by ODOE:

(A) Application form;

(B) Performance checked heat pump/AC diagnostics data entry form;

(C) Pre and post repair system air flow measurements using approved methods listed in (b), if applicable;

(D) Watt draw of existing fan motor and new ECM, if applicable; and

(E) Itemized labor and materials cost information for applicable measures, testing, and repairs.

(g) The amount of the performance checked heat pump/AC tax credit must be 25 percent of the cost of testing and repair, up to $250.

(10) Alternative Fuel Vehicles must have equipment installed to make the vehicle capable of storing and utilizing an alternative fuel for vehicle propulsion. Equipment may consist of original equipment manufacturer components; or

(a) Components for natural gas powered vehicles that meet EPA1-A requirements current at the time these rules are adopted; or

(b) Components for hybrid vehicles must provide the hybrid vehicle with a combination of power between propulsion energy systems such that the peak power ratio of the vehicle is 0.10 or greater; or

(c) Other components as recognized by ODOE as necessary for alternative fuel use.

(11) Alternative Fuel Fueling Systems must be installed to meet all state and local fire and life safety codes and be capable of re-fueling/recharging an alternative fuel vehicle within 14 hours. The following rules also apply:

(a) On-board charging systems that feed into the rechargeable energy storage system in a hybrid vehicle must be high-voltage systems of 100 Volts or higher that have an active regenerative braking system integrated into the recharging system of the hybrid vehicle; and

(b) The use of an on-board charging system on a hybrid vehicle must result in significant energy savings as determined by the Director of ODOE.

(12) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed; Have a maximum EUI(HERV) of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at –13°F/ – 25°C when operating at the lowest fan speed, if rated at this condition.

(13) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at –13°F/ – 25°C when operating at the lowest fan speed, if rated at this condition.

(14) Very High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory; Have a minimum SEER rating at DOE "B" conditions of 14.5 (Effective April 1, 2006, this requirement will be deleted.)(e) Have a minimum EER rating at DOE "A" conditions of 12.5 (Effective April 1, 2006, have a minimum EER rating at DOE "A" conditions of 13.0); and

(f) Be installed in accordance with the protocols specified in section 330-070-0073(10)(a) through 330-070-0073(10)(g) of these rules.

(15) Very High Efficiency Air Source Heat Pump Systems must:

(a) Be a central, split-system;

(b) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) that is in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory;

(d) Have a minimum DOE Region IV HSPF rating of 8.5 (Effective April 1, 2006. have a minimum DOE Region IV HSPF rating of 9.0);

(e) Have a minimum SEER rating at DOE "B" conditions of 13.0 (Effective April 1, 2006, this requirement will be deleted.)(f) Have a minimum EER rating at DOE "A" conditions of 11.0. (Effective April 1, 2006, have a minimum EER rating at DOE "A" conditions of 12.0); and

(g) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(16) Very High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating of 0.90 (90 percent);

(c) Use outdoor air for combustion; and

(d) The air handler for the unit must have an electronically commutated, permanent magnet variable speed DC (ECPM) motor, or have an EUI(FURNACE) of less than 0.02.

(17) Very High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(18) Very High Efficiency Hot Water Boiler Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted; and

(b) Have a minimum AFUE rating of 0.88 (88 percent).

(19) Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace systems may receive a supplemental tax credit amount, determined by ODOE, based on additional energy savings if the duct system to which it is attached is tested and certified in accordance with the protocols specified in Section 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the air conditioning and/or heating system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, at ODOE by April 1st of the tax year following the tax year for which the credits are being claimed.(20) Any other standards adopted by ODOE for energy efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director of the Oregon Department of Energy.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0089
Guidelines for Wind AEDs

(1) To qualify for a tax credit, a wind AED system must:

(a) Meet all applicable industry standards published by the American Wind Energy Association (AWEA). The customer and ODOE must be given a copy of the documentation that shows that these standards have been met. The documentation must apply to the correct make, model and version of the wind AED for which the applicant seeks the credit.

(b) Include a one-year written guarantee from the dealer or maker assuring the buyer a full refund or no-cost replacement of the system if the system does not meet all applicable standards published by AWEA. The guarantee shall provide that, in the event the system does not meet the AWEA standards, the refund or no-cost replacement shall be at the buyer's option.

(2) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(3) Materials used will assure that the wind AED has adequate:

(a) Strength;

(b) Resistance to wind, lightning, ice, moisture, corrosion and fire;

(c) Durability; and

(d) Low maintenance cost.

(4) The wind AED must withstand all natural forces it may be expected to experience.

(5) No part of a wind AED project must put toxic substances into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(6) Wind AED parts must be serviceable without the need to trespass.

(7) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AEDs may be shut down during highest expected winds.

(8) Manual Shutdown: All wind AEDs must have a manual way to stop the rotor from turning. This method must work safely during high winds and routine service.

(9) Overspeed Control: Rotor overspeeds shall be prevented by the wind AED's design.

(10) Tower safety: All parts of a wind AED project shall meet accepted engineering standards. Tower design must include consideration of:

(a) Gravity load; and

(b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(11) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

(12) Lightning: Wind AEDs must withstand lightning strikes.

(13) The Director may waive part or all of section (1) of this rule if production of the wind AED model stopped prior to 1990, or it is an owner-built system or a mechanical wind AED.

(14) The first-year energy yield of wind AEDs must be at least 350 kWh.

(a) The first-year energy yield must be estimated using the measured wind data and the wind AED's power curve or energy production data.

(A) The provided wind data must cover at least a one-year period.

(B) Wind data may be used from three nearby wind monitoring stations, the wind AED site itself, or, in the event of less than one year's measurements at the wind AED site, the application shall include the months of on-site measurements and one year's worth of data from two nearby locations.

(b) ODOE will use data supplied by the applicant to verify the first-year energy yield.

Stat. Auth.: ORS 469.160 - 469.180
Stats. Implemented:
Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

330-070-0097
Guidelines for Electricity Producing AEDs

(1) Generating AEDs linked with an electric utility must be installed in accordance with local utility interconnect guidelines and be UL listed and installed per the state electrical code.

(2) All applications must include the nominal rated electric capacity,the power curve and energy production data as a function of the average annual wind speed.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.170
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; ; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06

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Department of Environmental Quality
Chapter 340

Adm. Order No.: DEQ 10-2005(Temp)
Filed with Sec. of State: 12-27-2005
Certified to be Effective: 1-1-06 thru 6-30-06
Notice Publication Date:
Rules Adopted: 340-257-0010, 340-257-0020, 340-257-0030, 340-257-0040, 340-257-0050, 340-257-0060, 340-257-0070, 340-257-0080, 340-257-0090, 340-257-0100, 340-257-0110, 340-257-0120, 340-257-0130, 340-257-0150, 340-257-0160
Subject: This new division adopts California Motor Vehicle Emission standards for new vehicles sold in Oregon beginning with the 2009 model year.
Rules Coordinator: Larry McAllister—(503) 229-6412

340-257-0010
Purpose

The purpose of this division is to establish an Oregon Low Emission Vehicle program that implements **California vehicle emission standards** pursuant to section 177 of the federal Clean Air Act. This program establishes criteria and procedures for the manufacture, distribution and sale of new motor vehicles in Oregon as listed in OAR 340-257-0050.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0020
Applicability & Effective date

This division is in effect as of January 1, 2006 and applies to and establishes requirements for automobile manufacturers, Oregon motor vehicle dealers, and all 2009 and subsequent model year passenger cars, light duty trucks, medium duty vehicles, and medium duty passenger vehicles registered, leased, rented, delivered for sale or sold in the State of Oregon, except as provided in OAR 340-257-0060 Exemptions.

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0030
Definitions and Abbreviations

The definitions in OAR 340-200-0020, the definitions in CCR, Title 13, sections incorporated by reference, and the definitions in this rule apply to this division. If the same term is defined in different passages, the definitions in this rule apply first, followed by definitions in CCR Title 13 sections incorporated by reference, and finally the definitions in OAR 340-200-0020.

(1) "ATPZEV" means advanced technology Partial Zero Emission Vehicle as defined in CCR, Title 13, section 1962(i).

(2) "CARB" means California Air Resources Board.

(3) "CCR" means California Code of Regulations.

(4) "Emission credits" are earned when a manufacturer's reported fleet average is less than the required fleet average. Credits are calculated according to formulas contained in CCR, Title 13, section 1961(c) and 1961.1(b).

(5) "Emission debits" are earned when a manufacturer's reported fleet average exceeds the required fleet average. Debits are calculated according to formulas contained in CCR, Title 13, section 1961(c) and 1961.1(b).

(6) "Fleet average greenhouse gas emission requirements" are generally referred to as limitations on greenhouse gas exhaust mass emission values from passenger cars, light-duty trucks and medium-duty passenger vehicles. The fleet average greenhouse gas emission requirements are set

forth in CCR, Title 13, section 1961.1, and incorporated herein by reference.

(7) “Gross vehicle weight rating” or “GVWR” is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

(8) “Independent low volume manufacturer” is defined in CCR, Title 13, section 1900 and incorporated herein by reference.

(9) “Intermediate volume manufacturer” is defined in CCR, Title 13, section 1900 and incorporated herein by reference.

(10) “Large volume manufacturer” is defined in CCR, Title 13, section 1900 and incorporated herein by reference.

(11) “Light duty truck” is any 2000 and subsequent model year motor vehicle certified to the standards in CCR, Title 13, section 1961(a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for the purposes of transportation of property, is a derivative of such vehicle, or is available with special features enabling off-street or off-highway operation and use.

(12) “Medium duty passenger vehicle” (MDPV) is any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium-duty passenger vehicle definition does not include any vehicle which

(a) Is an “incomplete truck” i.e., is a truck that does not have the primary load carrying device or container attached; or

(b) Has a seating capacity of more than 12 persons; or

(c) Is designed for more than 9 persons in seating rearward of the drivers seat; or

(d) Is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for the purpose of this definition.

(13) “Medium duty vehicle” means any pre-1995 model year heavy-duty vehicle having a manufacturer’s gross vehicle weight rating of 8,500 pounds or less; any 1992 through 2006 model-year heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in section 1960.1(h)(2) having a manufacturer’s gross vehicle weight rating of 14,000 pounds or less; and any 2000 and subsequent model heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in Section 1961(a)(1) or 1962 having a manufacturer’s gross vehicle weight rating between 8,501 and 14,000 pounds.

(14) “Model year” is the manufacturer’s annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture is the date of completion of the chassis.

(15) “Non-methane organic gas” (NMOG) is the sum of non-oxygenated and oxygenated hydrocarbons contained in a gas sample as measured in accordance with the “California Non-Methane Organic Gas Test Procedures,” which is incorporated herein by reference.

(16) “NMOG fleet average emissions” is a motor vehicle manufacturer’s average vehicle emissions of all non-methane organic gases from passenger cars and light duty trucks in any model year subject to this regulation delivered for sale in Oregon.

(17) “Passenger car” is any motor vehicle designed primarily for transportation of persons and having a design capacity of twelve persons or less.

(18) “PZEV” means Partial Zero Emission Vehicle as defined in CCR, Title 13, section 1962(i).

(19) “Small volume manufacturer” is defined as set forth in CCR, Title 13, section 1900 and incorporated herein by reference.

(20) “ZEV” means Zero Emission Vehicle as defined in CCR Title 13, section 1962(i).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0040
Requirement to Meet California vehicle emission standards.

(1) Starting with the 2009 model year and for each model year thereafter no person may lease, rent out, license, deliver for sale, or sell any vehicle unless such vehicle is certified to the California emission standards pursuant to OAR 340-257-0050, except as provided in 340-257-0060, Exemptions.

(2) All motor vehicle manufacturers must comply with the fleet average emission requirements and the warranty, recall, and other applicable requirements contained in this division.

(3) All motor vehicle dealers must comply with the sales and reporting requirements contained in this division.

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0050
Incorporation by Reference

(1) For purposes of applying the incorporated sections of the California Code of Regulations, “California” means “Oregon” and “Air Resources Board (ARB)” or “California Air Resources Board (CARB)” means Department of Environmental Quality or Environmental Quality Commission depending on context, unless otherwise specified in this division or the application is clearly inappropriate.

(2) Emission standards, warranty, recall and other California provisions adopted by reference. Each manufacturer of new 2009 and subsequent model year passenger cars, light duty trucks, and medium duty vehicles must comply with each applicable standard specified in California Code of Regulations (CCR), Title 13 as incorporated by reference herein:

(a) Section 1900: Definitions. California effective date1-01-06.

(b) Section 1956.8(g) and (h): Exhaust Emission Standards and Test Procedures — 1985 and Subsequent Model Heavy Duty Engines and Vehicles. California effective date 1-31-05.

(c) Section 1960.1: Exhaust Emission Standards and Test Procedures — 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles. California effective date 3-26-04.

(d) Section 1961: Exhaust Emission Standards and Test Procedures — 2004 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 1-01-06.

(e) Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures — 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 01/01/06.

(f) Section 1962: Zero-Emission Vehicle Standards for 2005 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 08/14/05.

(g) Section 1962.1: Electric Vehicle Charging Requirements. California effective date 08/14/05.

(h) Section 1965: Emission Control and Smog Index Labels — 1979 and Subsequent Model Year Vehicles. California effective date 12/04/03.

(i) Section 1968.2: Malfunction and Diagnostic System Requirements — 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. California effective date 04/21/03.

(j) Section 1968.5: Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines. California effective date 04/21/03.

(k) Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions. California effective date 11/27/99.

(l) Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. California effective date 12-04-03.

(m) Section 2035: Purpose, Applicability and Definitions. California effective date 12/26/90.

(n) Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles. California effective date 11/27/99.

(o) Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such. California effective date 11/27/99.

(p) Section 2039: Emission Control System Warranty Statement. California effective date 12/26/90.

(q) Section 2040: Vehicle Owner Obligations. California effective date 12/26/90.

(r) Section 2046: Defective Catalyst. California effective date 1/16/79.

(s) Section 2109: New Vehicle Recall Provisions. California effective date 11-30-83.

(t) Section 2111: Applicability. California effective date 8/21/02.

(u) Section 2112: Definitions. California effective date 11/15/03.

(v) Appendix A to Article 2.1. California effective date 11/15/03.

(w) Section 2113: Initiation and Approval of Voluntary and Influenced Recalls. California effective date 1/26/95.

(x) Section 2114: Voluntary and Influenced Recall Plans. California effective date 11/27/99.

(y) Section 2115: Eligibility for Repair. California effective date 1/26/95.

(z) Section 2116: Repair Label. California effective date 1/26/95.

(aa) Section 2117: Proof of Correction Certificate. California effective date 1/26/95.

(bb) Section 2118: Notification. California effective date 1/26/95.

(cc) Section 2119: Record keeping and Reporting Requirements. California effective date 11/27/99.

(dd) Section 2120: Other Requirements Not Waived. California effective date 1/26/95.

(ee) Section 2122: General Provisions. California effective date 1/26/95.

(ff) Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. California effective date 1/26/95.

(gg) Section 2124: Availability of Public Hearing. California effective date 1/26/95.

(hh) Section 2125: Ordered Recall Plan. California effective date 1/26/95.

(ii) Section 2126: Approval and Implementation of Recall Plan. California effective date 1/26/95.

(jj) Section 2127: Notification of Owners. California effective date 1/26/95.

(kk) Section 2128: Repair Label. California effective date 1/26/95.

(ll) Section 2129: Proof of Correction Certificate. California effective date 1/26/95.

(mm) Section 2130: Capture Rates and Alternative Measures. California effective date 11/27/99.

(nn) Section 2131: Preliminary Tests. California effective date 1/26/95.

(oo) Section 2132: Communication with Repair Personnel. California effective date 1/26/95.

(pp) Section 2133: Record keeping and Reporting Requirements. California effective date 1/26/95.

(qq) Section 2135: Extension of Time. California effective date 1/26/95.

(rr) Section 2141: General Provisions. California effective date 12/28/00.

(ss) Section 2142: Alternative Procedures. California effective date 2/23/90.

(tt) Section 2143: Failure Levels Triggering Recall. California effective date 11/27/99.

(uu) Section 2144: Emission Warranty Information Report. California effective date 11/27/99.

(vv) Section 2145: Field Information Report. California effective date 11/27/99.

(ww) Section 2146: Emissions Information Report. California effective date 11/27/99.

(xx) Section 2147: Demonstration of Compliance with Emission Standards. California effective date 8/21/02.

(yy) Section 2148: Evaluation of Need for Recall. California effective date 11/27/99.

(zz) Section 2149: Notification of Subsequent Action. California effective date 2/23/90.

(aaa) Section 2235: Requirements. California effective date 9/17/91.

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

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360

Stats. Implemented: ORS 468.020

Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0060
Exemptions

The following vehicles are not subject to this division:

(1) Military tactical vehicles;

(2) Vehicles sold for registration and use in a state that is not subject to the California vehicle emission standards;

(3) Previously registered vehicles with more than seven thousand five hundred miles, provided that for vehicle dealers, the mileage at the time of sale is determined by the odometer statement when the dealer acquired the vehicle;

(4) Vehicles available only for rent to a final destination outside of Oregon;

(5) Vehicles purchased by a nonresident before establishing residency in the State of Oregon, regardless of the mileage on the vehicle;

(6) Vehicles purchased by Oregon residents while assigned to active military duty outside the State of Oregon;

(7) Vehicles transferred by inheritance or as a result of divorce, dissolution, or legal separation; and

(8) Emergency vehicles when a public safety agency has demonstrated to the Department's satisfaction that a vehicle that will meet said agency's needs is not otherwise reasonably available.

(9) A vehicle acquired by an Oregon resident to replace a vehicle registered to such resident that was stolen, damaged or failed beyond reasonable repair while out of state, provided that such replacement vehicle is acquired out of state when the previously-owned vehicle was either stolen, damaged, or failed beyond reasonable repair.

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360

Stats. Implemented: ORS 468.020

Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0070
Fleet Average Non-Methane Organic Gas (NMOG) Exhaust Emission Requirements, Reporting, and Compliance.

(1) Fleet average requirement. Effective model year 2009 and each model year thereafter, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars, light duty trucks and medium duty vehicles delivered for sale in Oregon must not exceed the Fleet Average NMOG Exhaust Emission Requirement set forth in CCR, Title 13, section 1961. Compliance will be based on the number of vehicles, subject to this regulation, delivered for sale in the State of Oregon.

(2) Fleet average NMOG exhaust emission credits and debits. Effective model year 2009, each vehicle manufacturer may accrue NMOG emission credits and debits and use credits in accordance with the procedures in California Code of Regulations, Title 13, section 1961. Debits and credits accrued and used will be based on the number of vehicles, subject to this division, produced and delivered for sale by each manufacturer in the State of Oregon.

(3) Reporting.

(a) Effective model year 2009, and for each model year thereafter, each manufacturer must submit by March 1 a report to the Department that includes:

(A) Pre-model year data that projects the fleet average NMOG exhaust emissions for vehicles expected to be delivered for sale in Oregon and

(B) End-of-model year data that calculates the fleet average NMOG exhaust emissions for the model year just ended.

(b) The report must follow the procedures in CCR, Title 13, section 1961 and be in the same format used to report such information to the California Air Resources Board.

(4) Compliance with fleet average NMOG requirement. Effective model year 2012, if a report submitted by the manufacturer under subsection(3)(b) of this rule demonstrates that the manufacturer is not in compliance with the fleet average emission standard, the manufacturer must submit to the Department within 60 days a Fleet Average Remediation Report. The Fleet Average Remediation Report must:

(a) Describe how the manufacturer intends to equalize any accrued debits, as required in CCR, Title 13, section 1961, and in accordance with section(2) of this rule;

(b) Identify all vehicle models delivered for sale in Oregon, their corresponding certification standards, and the percentage of each model delivered for sale in Oregon and California in relation to total fleet sales in the respective state; and

(c) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(5) For model years 2009 through 2011, manufacturers must submit the Fleet Average Remediation Report, if needed, to the Department by March 1, 2012. If debits are accrued in all three years, one year of debits must be equalized by the end of the 2012 model year.

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

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360

Stats. Implemented: ORS 468.020

Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0080
ZEV Sales Requirement

(1) Effective model year 2009, and each subsequent model year, each manufacturer must comply with the ZEV sales requirement contained in CCR, Title 13, section 1962, including early credit and banking provisions.

(2) An intermediate volume or large volume manufacturer of ZEVs, ATPZEVs and PZEVs may use vehicle equivalent credits in accordance with CCR, Title 13, section 1962, to offset the ZEV sales requirement required by section(1) of this rule above.

(3) Not withstanding OAR 340-257-0050, and except as provided in section(4) of this rule, the provisions of CCR, Title 13, section 1962(c)(2)(D) regarding "Counting a Type III ZEV Placed in a Section 177 State" will not end after the 2011 model year, but will continue in Oregon throughout the duration of the alternate compliance path specified in CCR, Title 13, Section 1962(b)(2)(B).

(4) Section(3) of this rule will not apply three years after the Department finds that the following conditions are met:

(a) The number of Type III ZEVs required to meet the minimum floor requirements in CCR, Title 13, section 1962 between the years 2012 and 2017 is proportioned among all states that have adopted California's vehicle emission standards, and

(b) Oregon's hydrogen refueling infrastructure is likely to be adequate to accommodate the number of Type III ZEVs needed to meet the minimum floor requirements of CCR, Title 13, section 1962(b)(2)(B)1 between 2012 and 2017.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-090
ZEV Credit Bank and Reporting

(1) Beginning model year 2009, each intermediate volume and large volume manufacturer of ZEVs, ATPZEVs and PZEVs may open an account in the ZEV credit bank. Except as provided in section (5) of this rule, the account must be opened no later than January 1, 2009.

(2) In order to open an account with the ZEV Credit Bank, the manufacturer must submit to the Department an account application form containing the following information for the account holder:

(a) Name;
(b) Mailing address;
(c) Telephone number;
(d) Type of business (if applicable);
(e) Authorized representative's name, title, phone number, fax number and email address; and
(f) Authorized representative's signature.

(3) Upon receiving a complete account application, the Department will issue a unique identifier for the account and notify the account applicant of the identifier.

(4) Except as provided in section (5) of this rule, annually each manufacturer must submit to the Department a Notice of Credit Generation or Notice of Credit Transfer to or from another manufacturer. Credits generated or acquired that are not reported to the Department on or before September 1 following the close of the model year in which the qualifying vehicle was produced and delivered for sale in Oregon may not be deposited into the manufacturer's account and may not be used to offset ZEV Sales Requirements.

(5) In order to generate and deposit credits for vehicles delivered for sale in Oregon during the 1999 through 2005 model years, a manufacturer must open an account with the ZEV Credit Bank and submit an appropriate Notice of Generation to the Department on or before September 1, 2006.

(6) To deposit credits into the ZEV Credit Bank, a manufacturer must submit a Notice of Credit Generation to the Department on a form provided by the Department. The Notice of Generation must include the following:

(a) For ZEVs delivered for sale in Oregon:
(A) Manufacturer's ZEV Credit Bank account identifier;
(B) Model year of vehicle qualifying for credit;
(C) CARB Executive Order number;
(D) ZEV Tier type (NEV, 0, I, II, III for California, III for Section 177 states);
(E) Vehicle identification number; and
(F) Date the vehicle was delivered for sale in Oregon.

(b) For ZEVs placed in service in Oregon, all information listed under subsection (6)(a) of this rule, plus the following:
(A) Date the vehicle was placed in service; and
(B) Whether the vehicle was placed in service with an option to purchase or lease the vehicle.

(c) For ATPZEVs and PZEVs delivered for sale in Oregon:
(A) Vehicle certification class (ATPZEV or PZEV);
(B) Manufacturer's ZEV Credit Bank account identification;
(C) Model year of vehicle(s);
(D) Date the vehicle was delivered for sale in Oregon;
(E) For ATPZEVs, the Federal test group;
(F) The CARB Executive Order number;
(G) Number of vehicles delivered; and
(H) VIN for each vehicle or the range of consecutive VINs for each group of vehicles.

(7) The number of the credits generated and deposited for each qualifying vehicle must be the number of qualifying vehicles multiplied by the applicable multiplier specified in CCR, Title 13, section 1962, except the multiplier applied to vehicles produced and delivered for sale in Oregon from January 1, 1999 to January 13, 2004 will be the highest applicable multiplier used by the CARB for the period January 1, 1999 to January 13, 2004.

(8) A vehicle equivalent credit does not constitute or convey a property right.

(9) A manufacturer with an account in the ZEV Credit Bank may acquire credits from another manufacturer with an account in the ZEV Credit Bank. However, if the credits are to be used for future compliance with the ZEV sales requirement at CCR Title 13, section 1962, the transaction must be recorded in the ZEV Credit Bank and certified by both parties to the transaction.

(10) For each acquisition of credits from another manufacturer, the manufacturer from whom the credits are acquired must supply the following information to the Department, on a form provided by the Department:
(a) Date of acquisition;
(b) Model year the credits were generated;
(c) Type of vehicle (NEV, ZEV type, ATPZEV, or PZEV); and
(d) Number of credits in grams/mile NMOG.

(11) The Department will verify all credits and, if there are any discrepancies, will notify the manufacturer and adjust the account. The Department may audit an account at any time.

(12) A manufacturer may deposit into its account in the ZEV Credit Bank a number of credits equal to its California credit balance as of January 2, 2008, multiplied by the number of new motor vehicles registered in Oregon, and divided by the number of new motor vehicles registered in California. The deposit may be made only after all credit obligations for model years 2008 and earlier have been satisfied in California.

(13) A manufacturer electing to deposit credits under section (12) of this rule, must offer for sale in Oregon in model years 2009 through 2011 any PZEV, ATPZEV or ZEV, except Type III ZEVs, that it offers for sale in California during the same period.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0100
Fleet Average Greenhouse Gas Exhaust Emission Requirements, Reporting and Compliance

(1) Each manufacturer subject to the greenhouse gas provisions of this regulation must comply with emissions standards, fleet average greenhouse gas exhaust mass emission requirements for passenger car, light duty truck, medium duty passenger vehicle weight classes, and other requirements of CCR, Title 13, section 1961.1.

(2) Requirements for Large Volume Manufacturers. The fleet average greenhouse gas exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles produced and delivered for sale in the State of Oregon by a large volume manufacturer for each 2009 and subsequent model year are established in CCR, Title 13, section 1961.1.

(3) Requirements for Small, Intermediate, and Independent Manufacturers. The fleet average greenhouse gas exhaust emission requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles delivered for sale in the State of Oregon by small volume, intermediate volume and independent low volume manufacturers are set forth in CCR, Title 13, section 1961.1, which specifies that requirements for these manufacturers are waived before the 2016 model year.

(4) Greenhouse gas emission credits and debits. Greenhouse gas credits and debits may be accrued and used based on each manufacturer's sale of vehicles in Oregon in accordance with CCR, Title 13, section 1961.1.

(5) Optional alternative compliance with greenhouse gas emission standards. Greenhouse gas vehicle test groups that are certified pursuant to CCR, Title 13, section 1961.1(a)(1)(B)2.a.i in the State of California may receive equivalent credit if delivered for sale and use in the State of Oregon.

(6) Alternative compliance credit. A manufacturer must submit to the Department the data set forth in CCR, Title 13, section 1961.1(a)(1)(B)2.a.i

for Oregon-specific sale and use in order to receive the credit identified in (5) above.

(7) Reporting on greenhouse gas requirements. Effective model year 2009 and for each model year thereafter, each manufacturer must submit by March 1 a report to the Department that includes:

(a) Pre-model year data that projects the fleet average greenhouse gas emissions for vehicles expected to be delivered for sale in Oregon and

(b) End-of-model year data that calculates the fleet average greenhouse gas emissions for the model year just ended. The report must include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to CCR, Title 13, section 1961.1. The report must follow the procedures in CCR, Title 13, section 1961.1 and be in the same format used to report such information to the California Air Resources Board.

(8) Compliance with fleet average greenhouse gas requirements. Effective model year 2009, if the report submitted by the manufacturer under subsection(7)(b) of this rule demonstrates that the manufacturer is not in compliance with the fleet average emission standards, the manufacturer must submit to the Department within 60 days a Fleet Average Remediation Report. The Fleet Average Remediation Report must:

(a) Describe how the manufacturer intends to equalize any accrued debits, as required in CCR, Title 13, section 1961.1,

(b) Identify all vehicle models delivered for sale in Oregon, their corresponding certification standards, and the percentage of each model delivered for sale in Oregon and California in relation to total fleet sales in the respective state, and

(c) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0110
Additional Reporting Requirements.

(1) Beginning with model year 2009, a manufacturer must submit to the Department one copy of the California Executive Order and Certificate of Conformity for certification of new motor vehicles for each engine family to be sold in the State of Oregon. Such Executive Orders must be submitted within thirty (30) days after being received from CARB. If such reports are available electronically, the manufacturer must send the record in an electronic format acceptable to the director or the director's designee. Manufacturers may discontinue submitting these reports if the Department so notifies them.

(2) Effective model year 2009, and before the beginning of each model year, upon request each manufacturer must submit to the Department a list of all models of medium duty vehicles and medium duty passenger vehicles that will be delivered to Oregon dealers.

(3) Upon the Department's request, each manufacturer must report to the Department the vehicle identification numbers (VIN) and the corresponding California or federal vehicle emission category of each passenger car, light duty truck, and medium duty passenger vehicle delivered for sale in the contiguous United States. If such reports are available electronically, the manufacturer must send the record in an electronic format acceptable to the director or the director's designee. Manufacturers may discontinue or amend these reports if the Department so agrees.

(4) To determine compliance with this division, the Department may require any vehicle manufacturer to submit any documentation the Department deems necessary for the effective administration and enforcement of this division, including all certification materials submitted to CARB.

(5) Any person who sells a previously-titled light-duty and medium-duty motor vehicle subject to this division that is not exempt under OAR 340-257-0060 must report the sale to the Department. The report must be provided in a manner specified by the Department in coordination with the Oregon Department of Transportation, Driver and Motor Vehicles Services Division. The report must include the following information:

(a) The dealer's name and address;

(b) Vehicle description including make and model year;

(c) The vehicle identification number;

(d) Date of sale;

(e) The California or federal emission category to which the vehicle is certified; and

(f) Evidence of any applicable exemption.

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0120
Warranty Requirements.

(1) For all 2009 and subsequent model year vehicles subject to the provisions of this division, each manufacturer must provide, to the ultimate purchaser and each subsequent purchaser, a warranty that complies with the requirements contained in CCR, Title 13, sections 2035 through 2038, 2040, and 2046.

(2) The 15-year or 150,000-mile extended warranty specified in CCR, Title 13, section 1962(c)(2)(D) for PZEVs is not included as a requirement of this rule or OAR 340-257-0050, provided that PZEVs delivered for sale to Oregon are equipped with the same quality components as PZEVs supplied to areas where the full 15-year or 150,000-mile warranty remains in effect. The provisions of this section do not amend the requirements of CCR, Title 13, section 1962(c)(2)(D) that indicate the warranty period for a zero emission energy storage device used for traction power will be 10 years.

(3) For all 2009 and subsequent model year vehicles subject to the provisions of this division, each manufacturer must include the emission control system warranty statement that complies with the requirements in CCR, Title 13, section 2039. Manufacturers may modify this statement as necessary to inform Oregon vehicle owners of the warranty's applicability. The manufacturer must provide a telephone number that Oregon consumers can use to learn answers to warranty questions.

(4) All manufacturers must submit to the Department Failure of Emission-Related Components reports as defined in CCR, Title 13, section 2144, for vehicles subject to this regulation. For purposes of compliance with this requirement, manufacturers may submit copies of the Failure of Emission-Related Components reports that are submitted to the California Air Resources Board in lieu of submitting reports for vehicles subject to this division. Manufacturers may discontinue submitting these reports if so notified by the Department.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0130
Recalls

(1) Any order issued or enforcement action taken by CARB to correct noncompliance with any section of Title 13, that results in the recall of any vehicle pursuant to CCR, Title 13, sections 2109-2135, will be prima facie evidence concerning vehicles registered in Oregon. If the manufacturer can demonstrate to the Department's satisfaction that the order or action is inapplicable to vehicles registered in Oregon, the Department will not pursue a recall of vehicles registered in Oregon.

(2) Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to CCR, Title 13, sections 2113–2121 must extend to all applicable vehicles registered in Oregon. If the manufacturer can demonstrate to the Department's satisfaction that said campaign is inapplicable to vehicles registered in Oregon, the campaign will not apply in Oregon.

(3) For vehicles subject to an order of enforcement action under section(1) of this rule, each manufacturer must send to owners of vehicles registered in the State of Oregon a notice that complies with the requirements in CCR, Title 13, sections 2118 or 2127. The manufacturer must provide a telephone number that Oregon consumers can use to learn answers to questions about any recall that affect Oregon vehicles.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0150
Inspections and Information Requests

(1) The Department may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this division. The Department inspections will occur during regular business hours and on any premises owned, operated or used by any dealer or rental car agency for the purposes of determining compliance with the requirements of this division.

(2) For the purposes of determining compliance with this division, the Department may require any vehicle dealer or rental car agency to submit any documentation the Department deems necessary to the effective administration and enforcement of this division. This provision does not require creation of new records.

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

340-257-0160
Severability

Each section of this division is severable, and if any section of this regulation is held invalid, the remainder will continue in full force and effect.

Stat. Auth.: ORS 468.020, 468A.025 & 468A.360
Stats. Implemented: ORS 468.020
Hist.: DEQ 10-2005(Temp), f. 12-27-05, cert. ef. 1-1-06 thru 6-30-06

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Adm. Order No.: DEQ 11-2005
Filed with Sec. of State: 12-28-2005
Certified to be Effective: 12-28-05
Notice Publication Date: 9-1-05
Rules Amended: 340-045-0033
Subject: The Oregon Department of Environmental Quality (DEQ) is proposing to renew the 1200-C National Pollutant Discharge Elimination System (NPDES) general permit for water quality which expires on December 31, 2005. This general permit controls pollution from stormwater runoff from land disturbance and construction activities on one or more acres in Oregon.

• Currently, about 1,400 construction projects are covered under this permit. The Department uses a general permit with standard conditions to regulate construction because it is more efficient and less expensive for both the Department and the builder when compared to requiring individual permits for each project.

• The amended permit requires a 14-day public notice and comment period on applications and erosion and sediment control plans for construction sites disturbing five or more acres of land. DEQ will administer this public notice process.

• For those construction activities that affect streams listed as "water quality impaired" for sedimentation or turbidity under the federal Clean Water Act Section 303(d), or streams for which the Department has developed a Total Maximum Daily Load for sedimentation or turbidity, the permit registrant must either:

- Option 1: Monitor stormwater run-off (using a turbidity meter) for turbidity and meet a numeric turbidity benchmark, or

- Option 2: Install additional Best Management Practices designed to treat sediment and turbidity in stormwater.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-045-0033
General Permits

(1) The Director may issue general permits for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:

(a) There must be several minor sources or activities that involve the same or substantially similar types of operations.

(b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.

(c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.

(d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.

(e) The Commission has adopted the general permit into rule by reference.

(2) General permits issued after the effective date of this rule will specify the following:

(a) The requirements to obtain coverage under a general permit, including application requirements and application submittal deadlines. The Department may determine that submittal of an application is not necessary after evaluating the type of discharge, potential for toxic and conventional pollutants in the discharge, expected discharge volume, availability of other means to identify dischargers, and estimated number of dischargers to be covered by the permit. The Department's evaluation must be provided in the public notice for the general permit.

(b) The process used by the Department to notify a person that coverage under a general permit has been obtained and the discharge or activity is authorized.

(3) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.

(4) Prior to issuing a general permit, the Department will follow the public notice and participation procedures outlined in OAR 340-045-0027, 340-045-0035(3), and ORS 183.325 to 183.410. In addition the Department will make a reasonable effort to mail notices of pending actions to those persons known by the Department who are likely to be covered by the general permit.

(5) Any person operating a discharge source or conducting an activity described in a general permit must apply for coverage under the general permit, unless the general permit does not require submission of an application pursuant to (2)(a) of this rule or the source or activity is specifically covered by an individual NPDES or WPCF permit. Any person seeking coverage under a general permit must submit an application as required under the terms of the applicable NPDES or WPCF general permit. If application requirements are not specified in the general permit, procedures in OAR 340-045-0030 or 340-071-0162, whichever is applicable, must be followed. A person who fails to submit application in accordance with the terms of the general permit, OAR 340-045-0030 or 340-071-0162, whichever is applicable, is not authorized to conduct the activity described in the permit.

(6) Any person required to have coverage under a general permit must pay permit fees as required in OAR 340-045-0070 to 340-045-0075 or 340-071-0140 to obtain and maintain coverage under that permit.

(7) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be canceled or allowed to expire, and that it be covered by a general permit if its discharge or activity may be covered by an existing general permit. As long as the permittee is covered by an individual NPDES or WPCF permit, the conditions and limitations of the individual permit govern, until such time as it is canceled or expires.

(8) Any person not wishing to be covered by a general permit may make application for an individual permit in accordance with OAR 340-045-0030 or 340-071-0162, whichever is applicable.

(9) The Director may revoke coverage and authorization under a general permit pursuant to OAR 340-045-0060 as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit. Any interested person may petition the Director to take action under this section. Cases where an individual permit may be required include the following:

(a) The discharge or activity is a significant contributor of pollution or creates other environmental problems;

(b) The permittee is not in compliance with the terms and conditions of the general permit, submitted false information, or is in violation of any applicable law;

(c) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;

(d) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit; or

(e) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(10) The following general permits are adopted by reference in this rule and available for review at the Department:

(a) NPDES 200-J, Filter backwash (issued August 29, 1997)

(b) NPDES 500-J, Boiler blowdown (issued August 29, 1997)

(c) WPCF 600, Offstream placer mining (issued April 9, 1997)

(d) NPDES 700-J, Suction dredges (issued May 3, 1999)

(e) WPCF 800, Confined animal feeding operations (issued August 8, 1990)

(f) NPDES 900-J, Seafood processing (issued June 7, 1999)

(g) WPCF 1000, Gravel mining (issued July 26, 2002)

(h) NPDES 1200-A, Storm water runoff from sand, gravel & nonmetallic quarrying & mining in Standard Industrial Classification (SIC) 14, asphalt mix batch plants, and concrete batch plants. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 26, 2002)

(i) NPDES 1200-C, Storm water runoff from construction activities, including clearing, grading, and excavation, and stockpiling that disturbs one or more acres, and may discharge to surface waters or conveyance systems leading to surface waters. Also included are activities that will disturb less than one acre if such activities are part of a larger common plan of

development that will disturb one or more acres over time (issued December, 2005)

(j) NPDES 1200-CA, Government agencies responsible for storm water runoff from construction activities that disturbs five or more acres; effective December 1, 2002, construction activities that disturb one or more acres are covered (issued February 20, 2001)

(k) NPDES 1200-COLS, Storm water runoff in the Columbia Slough watershed from industrial activities listed in 8(l) of this rule (issued December 22, 1999)

(l) NPDES 1200-Z, Storm water runoff from: Warehousing in SIC 4221-4225; Food processing in SIC 20; Landfills, land app. sites; Heavy industrial in SIC 28, 29, 30, 31, 32, 33 & steam electric power generating (includes coal/hogged fuel handling); Light mfg. in SIC 34, 35, 36, 37, 38 & 39 includes ship & boat building/repair; Printing in SIC 27; Textile & apparel mfg. in SIC 22 & 23; Transportation in SIC 40, 41, 42, 43, 44, 45 & 5171; Wood products mfg. in SIC 24 & 25; Metal scrap yards, battery reclaimers & auto salvage yards in SIC 5015 & 5093; Hazardous waste treatment, storage, & disposal facilities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 26, 2002)

(m) NPDES 1300-J, Oily storm water runoff and oil/water separators (issued January 11, 2000)

(n) WPCF 1400-A, Seasonal food processing & wineries, less than 25,000 gallons/day (issued August 22, 2000)

(o) WPCF 1400-B, Other food processing, less than 25,000 gallons/day (issued August 22, 2000)

(p) NPDES 1500-A, Petroleum hydrocarbon cleanups discharged to surface waters (issued August 22, 2000)

(q) WPCF 1500-B, Petroleum hydrocarbon cleanups (issued August 22, 2000)

(r) NPDES 1700-A, Vehicle and equipment wash water discharged to surface waters (issued March 5, 1998)

(s) WPCF 1700-B, Vehicle and equipment wash water (issued March 5, 1998)

(t) NPDES 1900-J, Non-contact geothermal heat exchange (issued September 11, 1997)

(u) NPDES 01, Confined animal feeding operations (issued October 1, 2003).

Stat. Auth.: ORS 468.020, 468B.020 & 468B.035
Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050
Hist.: DEQ 28-1980, f. & ef. 10-27-80; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 13-2001, f. & cert. ef. 10-16-01; DEQ 8-2002, f. & cert. ef. 8-9-02; DEQ 14-2002, f. & cert. ef. 10-16-02; DEQ 12-2003, f. & cert. ef. 9-2-03; DEQ 5-2005, f. & cert. ef. 7-1-05; DEQ 11-2005, f. & cert. ef. 12-28-05

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Department of Fish and Wildlife
Chapter 635

Adm. Order No.: DFW 142-2005
Filed with Sec. of State: 12-16-2005
Certified to be Effective: 12-16-05
Notice Publication Date: 11-1-05
Rules Amended: 635-043-0085, 635-045-0002, 635-065-0090, 635-065-0735
Subject: Rules were amended in regards to the Permanent Disabilities Permit, which is now called the Oregon Disabilities Hunting and Fishing Permit.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-043-0085
Hunting from a Motor-Propelled Vehicle

(1) Any person who carries on his or her person an Oregon Disabilities Hunting and Fishing Permit and any required license and tag issued by the Commission may hunt wildlife from a motor-propelled vehicle except while the vehicle is in motion or on any public road or highway.

(2) Any person authorized to alleviate wildlife damage pursuant to ORS 498.136 may hunt designated wildlife from a motor propelled vehicle in the manner prescribed by permit.

Stat. Auth.: ORS 183 & 496
Stats. Implemented: ORS 183 & 496
Hist.: 3WC 2, f. 12-19-73, ef. 1-11-74, Renumbered from 630-025-0183, Renumbered from 635-010-0160, Renumbered from 635-07-327; FWC 27-1987, f. & ef. 6-19-87; FWC 49-1991, f. & cert. ef. 5-13-91; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 142-2005, f. & cert. ef. 12-16-05

635-045-0002
Definitions

(1) "Adult hunting license" is a resident or nonresident hunter's license, resident combination angler's and hunter's license, disabled war veteran's license, pioneer's hunting license or senior citizen's hunting and fishing license.

(2) "Agricultural lands" are lands that are not less than ten acres in extent that have been cultivated and planted or irrigated to domestic crops that are currently in use. Isolated home gardens, abandoned farmsteads, logged lands, rangelands, and tree farms, are not included in this definition.

(3) "Antler Point" is a point at least one inch in length measured from tip of point to nearest edge of beam. This definition applies only to the three-point elk and spike only elk bag limits.

(4) "Antlerless deer" means doe or fawn deer.

(5) "Antlerless elk" means cow or calf elk.

(6) "Application" means the electronic form completed and purchased to apply for a hunt where the number or distribution of hunters is limited through a public drawing or other means. Mail order applications sent to the Department along with the proper remittance are used to generate the electronic form.

(7) "Baited Area" means an area where baiting has taken place.

(8) "Baiting" means the placing, exposing, depositing, distributing, or scattering of corn, wheat, salt or other feed to constitute a lure or enticement to, on, or over an area where hunters are attempting to take game birds.

(9) "Brace" is defined as an orthosis that is prescribed by a physician and fabricated by a orthotist certified by the American Board for Certification in Orthotics and Prosthetics, Inc.

(10) "Brace Height" is the distance from the back of the bow's riser at the handgrip to the string when the bow is at rest.

(11) "Buck Deer" means a male deer with at least one visible antler.

(12) "Buck Pronghorn" means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.

(13) "Bull elk" for the purposes of a bag limit definition, means a male elk with at least one visible antler.

(14) "Calendar year" means from January 1 through December 31.

(15) "Carcass" is the skinned or unskinned body, with or without entrails, of a gamebird or game mammal.

(16) "Cascade elk" means any live elk occurring in the Dixon, Evans Creek, Indigo, Keno, McKenzie, Metolius, Rogue, Santiam and Upper Deschutes units and those parts of Fort Rock and Spraque units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.

(17) "Cervid" means any member of the family cervidae (deer), including gametes or hybrids. Species included within the family, taxonomic nomenclature, and other matters pertaining to the identification of animals within the family shall be that of Walker's Mammals of the World, Sixth Edition, Johns Hopkins University Press, Baltimore, Maryland, 1999, by Ronald M. Nowak.

(18) "Cervid Propagation License — Type 1" means a license required to hold any live cervid species other than fallow deer and reindeer except as provided in OAR 635-049-0010(1)-(3).

(19) "Cervid Propagation License — Type 2" means a license required to hold live fallow deer and reindeer except as provided in OAR 635-049-0010(1)-(3).

(20) "Closed season" is any time and place when it is not authorized to take a specific species, sex or size of wildlife.

(21) "Coast elk" means any live elk occurring in the Alsea, Applegate, Chetco, Melrose, Powers, Saddle Mountain, Scappoose, Siuslaw, Sixes, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.

(22) "Commission" means the Oregon Fish and Wildlife Commission.

(23) "Controlled hunt" is a season where the number or distribution of hunters is limited through a public drawing or other means.

(24) "Department" means the Oregon Department of Fish and Wildlife.

(25) "Director" means the Oregon Fish and Wildlife Director.

(26) "Doe or fawn pronghorn" means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawns (young of the year) of either sex.

(27) "Eastern Oregon" means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.

(28) "Eastern Oregon deer" means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.

(29) "Eligible Hunter" means someone who will be 12 years of age by the time they hunt.

(30) "Entry permit" means a permit issued by the Department to be in an area where entry is restricted by regulation.

(31) "Established airport" is one that the Aeronautics Division has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.

(32) "Evidence of lawful possession" means any license or permit allowing possession of the specified live cervid; or other documentation establishing lawful possession, including but not limited to a statement of nonrequirement for a license or permit for the specified live cervid granted by the country or state of origin.

(33) "Facility" means the location where animals are held, including the exterior perimeter fence and all pastures, paddocks, runways, buildings, and pens therein.

(34) "Feral Swine" means animals of the genus Sus as defined by the Oregon Department of Agriculture in OAR 603-010-0055.

(35) "Fiscal year" means from July 1 through June 30.

(36) "Furbearers " are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.

(37) "Game Birds" are any waterfowl, snipe, band-tailed pigeon, dove, pheasant, quail, partridge, grouse, or wild turkey.

(38) "Game mammals" are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.

(39) "General season" is any season open to the holder of a valid hunting license and appropriate game mammal tag without restriction as to the number of participants.

(40) "Hold" means any form of possession or control of an animal, gamete, hybrid, or part thereof.

(41) "Hunter certification" means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.

(42) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.

(43) "Husbandry" means the care given animals directly by their owners and managers, including but not limited to:

(a) Nutrition;

(b) Breeding program;

(c) Veterinary medical care;

(d) Environmental cleanliness; and

(e) Humane handling.

(44) "Immediate family" means a landowner's spouse, children, father, mother, brother, sister, stepchildren, and grandchildren.

(45) "Inedible" means unfit for human consumption.

(46) "Landowner", as used in OAR chapter 635, division 075, means:

(a) A person who holds title in trust or in fee simple to 40 or more contiguous acres of land; provided however that a recorded deed or contract of ownership shall be on file in the county in which the land is located; and/or

(b) A corporation holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation shall be registered with the State of Oregon; and/or

(c) A partnership holding title in fee simple to 40 or more contiguous acres of land; and/or

(d) Persons who hold title as part of a time share are not eligible for landowner preference.

(47) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.

(48) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.

(49) "Muzzleloader" is any single-barreled (shotguns may be double barreled) long gun meant to be fired from the shoulder and loaded from the muzzle with an open ignition system and open or peep sights.

(50) "Native cervid" means mule deer, black-tailed deer, white-tailed deer, Roosevelt elk, Rocky Mountain elk and moose, including gamete or hybrid.

(51) "Nonindigenous cervid" means any member of a cervid species, including gamete or hybrid, not classified as a native cervid species.

(52) "On or within" means a straight line distance measured on a map.

(53) "One deer" means a buck, doe, or fawn deer.

(54) "One elk" means a bull, cow, or calf elk.

(55) "Open Ignition" is an ignition system where the percussion cap, or frizzen, or flint is visible and exposed to the weather at all times and is not capable of being closed or covered by any permanent piece of the weapon.

(56) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for profit.

(57) "Point-of-Sale" (POS) is a computerized licensing system available at locations that sell Oregon's hunting and angling licenses. Licenses and tags are generated and issued directly to customers from a POS machine at the time of sale.

(58) "Possession" means to have physical possession or to otherwise exercise dominion or control over any wildlife or parts thereof, and any person who counsels, aids or assists another person holding such wildlife is deemed equally in possession.

(59) "Postmark" means the date of mailing as stated in a mark applied by the U.S. Postal Service to a piece of mail. Office postal machine meter marks are not valid application deadline postmarks.

(60) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.

(61) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(33), "game birds" as defined in OAR 635-045-0002(32), "furbearers" as defined in OAR 635-045-0002(31), "threatened and endangered species" as defined in OAR 635-100-0125, and "nongame wildlife protected" as defined in OAR 635-044-0130.

(62) "Pursue" means the act of trailing, tracking, or chasing wildlife in an attempt to locate, capture, catch, tree, or kill any game mammal or furbearer.

(63) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(64) "Red deer" means any species, subspecies, or race of the elk-red deer-wapiti complex Cervus elaphus not indigenous to the state of Oregon.

(65) "Release" is permitting any domestically-raised or imported wildlife currently or previously in possession to exist alive outside an approved holding or propagation facility. For the purposes of OAR chapter 635, division 049, release means permitting a cervid currently or previously in possession to exist alive outside an approved holding or propagating facility, except animals that are in transit pursuant to OAR 635-049-0075

(66) "Resident" is any person who has resided in Oregon for a period of at least six months immediately prior to the date of making application for a license or tag. Members of the armed forces assigned to permanent duty status in Oregon including spouses and dependent children, and foreign exchange students attending school in Oregon under a foreign student exchange program may purchase a resident license and tags. All other persons are nonresidents.

(67) "Resident juvenile" is any "Resident" of Oregon 14 through 17 years of age.

(68) "River" is that portion of a natural water body lying below the level of bankfull stage. Bankfull stage is the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.

(69) "Rocky Mountain elk" is any live elk occurring east of the following described line: Beginning at the California line on Highway 97; north on Highway 97 to State Highway 26 at Madras; northwest on Highway 26 to east boundary of Santiam Unit; north along east boundary of Santiam Unit to the Columbia River.

(70) "Shotgun" is a smoothbore firearm, designed for firing birdshot, and intended to be fired from the shoulder, with a barrel length of 18 inches or more, and with an overall length of 26 inches or more. Exception: Shotguns equipped with rifled slug barrels are considered shotguns when used for hunting pronghorn antelope, black bear, cougar, deer, or elk when centerfire rifles or shotguns are legal weapons.

(71) "Sight bait" is exposed flesh bait within 15 feet of any leghold trap set for carnivores.

(72) "Spike deer" is a deer with spike (unbranched) antlers.

(73) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (brow tines are not considered an antler branch under spike-only regulations).

(74) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002(41)(b).

(75) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(76) "Take" means to kill or obtain possession or control of any wildlife.

(77) "Three point plus elk" for the purposes of a bag limit definition, means a bull elk having 3 points or more on one antler including the brow tine.

(78) "Unbarbed broadhead" is a fixed position arrowhead where the rear edge of the blade(s) forms an angle with the arrow shaft to which it is attached of 90o or greater.

(79) "Unprotected Mammals and Birds" are European starling, house sparrow, rock dove and any mammal species for which there are no closed seasons or bag limits.

(80) "Valid certification permit" is a permit for the current season that has not become invalid after

taking a season limit or illegal game bird.

(81) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(82) "Wait period" means the length of time a successful controlled hunt applicant must wait before reapplying for the species for which he was successful in drawing.

(83) "Waste" means to allow any edible portion of any game mammal (except cougar) or game bird to be rendered unfit for human consumption, or, to fail to retrieve edible portions, except internal organs, of such game mammals or game birds from the field. Entrails, including the heart and liver, are not considered edible.

(84) "Waterfowl" means ducks, geese, mergansers and coots.

(85) "Weapon" is any device used to take or attempt to take wildlife.

(86) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(87) "Western Oregon deer" is any live deer except the Columbian white-tailed deer occurring west of the east boundaries of the Santiam, McKenzie, Dixon, Indigo, and Rogue units.

(88) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(89) "Wildlife" means for the purposes of harassment to relieve damage described in OAR 635-043-0096 through 635-043-0115, game mammals, game birds except migratory birds protected by Federal law, furbearing mammals and wildlife declared protected by the commission.

(90) "Wildlife" means for the purposes of scientific taking described in OAR 635-043-0023 through 635-043-0045, wild birds, wild mammals, amphibians and reptiles, including nests, eggs, or young of same.

(91) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 47-1989, f. & cert. ef. 7-25-89; FWC 104-1989, f. & cert. ef. 9-29-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 22-1990, f. & cert. ef. 3-21-90; FWC 17-1991, f. & cert. ef. 3-12-91; FWC 33-1991, f. & cert. ef. 3-25-91; FWC 50-1991, f. & cert. ef. 5-13-91; FWC 57-1991, f. & cert. ef. 6-24-91; FWC 9-1993, f. & cert. ef. 2-8-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 20-1995, f. & cert. ef. 3-6-95; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 53-1997, f. & cert. ef. 9-3-97; FWC 71-1997; f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 142-2005, f. & cert. ef. 12-16-05

635-065-0090
Disabled Hunter Seasons and Bag Limits

(1) ORS 496.018 provides that in order to be considered a person with a disability under the wildlife laws, a person shall provide to the Fish and Wildlife Commission either written certification from a physician of certain specified disabilities or written proof that the U.S. Department of Veterans Affairs or the Armed Forces shows the person to be at least 65 percent disabled. To implement that statute, this rule provides for the issuance of an "Oregon Disabilities Hunting and Fishing Permit" by the Department.

(2) To obtain an "Oregon Disabilities Hunting and Fishing Permit," a person shall submit to the Department a completed form specified by the Department. If the completed form accurately provides all required information, the Department shall issue an "Oregon Disabilities Hunting and Fishing Permit". Permits are valid for two calendar years. To renew a permit, the holder must submit a new, updated application form.

(3) The Department may revoke, suspend or decline to issue or renew an "Oregon Disabilities Hunting and Fishing Permit" for failure to submit accurate information. The holder or applicant may request a contested case hearing to appeal such an action.

(4) A person who possesses an Oregon Disabilities Hunting and Fishing Permit issued by the department is qualified for expanded bag limits as follows: [Table not included. See ED. NOTE.]

(5) The Oregon Disabilities Hunting and Fishing Permit is valid only with a general season or controlled bull elk, buck deer, or pronghorn antelope tag for the area and time period being hunted. The permit must be carried on the person while hunting.

(6) An able-bodied companion may accompany a person with an Oregon Disabilities Hunting and Fishing Permit and kill any animal wounded by the permit holder. The wounded animal must be killed using a legal weapon for the season and species designated on the tag. The companion must immediately attach the permit holder's tag to the carcass of the animal. The companion is not required to possess a hunting license or tag.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 29-1987, f. & ef. 6-19-87; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 142-2005, f. & cert. ef. 12-16-05

635-065-0735
Vehicles, Boats, Aircraft

It is *unlawful*:

(1) To hunt any big game from a motor-propelled vehicle. Exception: A qualified disabled hunter may obtain an Oregon Disabilities Hunting and Fishing Permit to hunt from a motor vehicle except while the vehicle is in motion or on any public road or highway. For the purpose of this regulation, "motor vehicle" includes All Terrain Vehicles (ATVs).

(2) To communicate information on the location of game mammals from an aircraft.

(3) To hunt within eight hours after having been transported by helicopter or fixed-wing aircraft to any point other than an established airport adequate for fixed-wing aircraft.

(4) To shoot at pronghorn antelope from a point within 50 yards of a motor-propelled vehicle including aircraft, except for qualified disabled hunters as shown in 635-065-735(1).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 142-2005, f. & cert. ef. 12-16-05

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Adm. Order No.: DFW 143-2005(Temp)
Filed with Sec. of State: 12-16-2005
Certified to be Effective: 1-1-06 thru 4-15-06
Notice Publication Date:
Rules Amended: 635-004-0027
Subject: Amend rule to set the 2006 harvest quota for the Yaquina Bay commercial roe herring fishery.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-004-0027
Inland Waters Herring Season

There is no closed season for the commercial taking of herring in inland waters except:

(1) In all inland waters except Yaquina Bay, herring taken during the period January 1 through April 15 may only be sold for use as bait.

(2) In Yaquina Bay:

(a) The open season for the taking of herring is January 1 through December 31;

(b) The yearly harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine Resources Program. The harvest quota for the Yaquina Bay commercial roe herring fishery during the period January 1 through April 15, 2006 is 22 metric tons. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(c) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237;

(d) During the period January 1 through April 15 it is unlawful to:

(A) Fish commercially from midnight Friday through midnight Sunday with nets;

(B) Use any fishing gear or method of harvest for the taking of herring other than: a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursing rings on the purse line; lampara net; hook and line "jigging"; or eggs-on-kelp method.

Stat. Auth.: ORS 506.119 & 506.129
Stats. Implemented: ORS 506.129
Hist.: FWC 50-1979, f. & ef. 11-1-79; FWC 67-1980, f. & ef. 12-3-80; FWC 4-1983, f. 1-28-83, ef. 2-1-83; FWC 8-1983(Temp), f. & ef. 2-15-83; FWC 8-1984(Temp), f. & ef. 3-5-84, FWC 29-1984, f. & ef. 7-3-84; FWC 9-1985(Temp), f. & ef. 2-20-85; FWC 5-1986(Temp), f. & ef. 2-11-86; FWC 6-1989(Temp), f. 2-15-89, cert. ef. 2-16-89; FWC 18-1990(Temp), f. 2-23-90, cert. ef. 2-24-90; FWC 13-1991(Temp), f. & cert. ef. 2-22-91; FWC 21-1995(Temp), f. 3-7-95, cert. ef. 3-8-95; FWC 10-1996(Temp), f. & cert. ef. 3-5-96; FWC 14-1997(Temp), f. & cert. ef. 3-10-97; DFW 11-2003, f. & cert. ef. 2-10-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 124-2004(Temp), f. 12-10-03, cert. ef. 1-1-04 thru 4-15-04; Administrative correction 8-2-04; DFW 119-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 4-15-05; Administrative correction 4-20-05; DFW 143-2005(Temp), f. 12-16-05, cert. ef. 1-1-06 thru 4-15-06

Adm. Order No.: DFW 144-2005(Temp)
Filed with Sec. of State: 12-20-2005
Certified to be Effective: 1-1-06 thru 3-31-06
Notice Publication Date:
Rules Amended: 635-004-0090
Subject: Amend rule to adopt a 60-inch size limit for green sturgeon in the commercial fisheries.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-004-0090
Size Limit

(1) Except as provided in OAR 635-007-0700 through 635-007-0720 it is *unlawful* to:

(a) Take from the waters of this state or to land sturgeon for commercial purposes less than 48 inches or more than 60 inches in length;

(b) Remove the head or tail of any sturgeon taken from the waters of this state or landed for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(c) To possess, sell, or transport any whole sturgeon under four feet in length taken for commercial purposes in the waters of this state or the Pacific Ocean. Proof of possession, sale, or transportation of any dressed sturgeon under 28 inches in length exclusive of head and tail shall in itself create a permissible inference that the dressed sturgeon was under 48 inches in length at the time it was taken.

(2) Any person fishing with commercial fishing gear in the waters of this state who, on lifting, drawing, taking up or removing any such gear finds sturgeon entangled or caught therein which are not within the legal length limits set forth in section (1)(a) of this rule or during a season not open for sturgeon, shall immediately, with care and the least possible injury to the fish, disentangle, release and transfer the fish to the water without violence.

Stat. Auth.: ORS 506.119, 506.129 & 507.030
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FC 241, f. 4-5-72, ef. 4-15-72; Renumbered from 625-010-0130; Renumbered from 635-036-0120; FWC 39-1981, f. 10-30-81, ef. 1-1-81; FWC 33-1988, f. & cert. ef. 5-24-88; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 144-2005(Temp), f. 12-20-05, cert. ef. 1-1-06 thru 3-31-06

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Adm. Order No.: DFW 145-2005(Temp)
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 1-1-06 thru 3-31-06
Notice Publication Date:
Rules Amended: 635-017-0095, 635-023-0095, 635-042-0130, 635-042-0133, 635-042-0135
Subject: Amend rules to set commercial fishing seasons for smelt and sturgeon in the Columbia River below Bonneville Dam, adopt green sturgeon size limits, and establish recreational sturgeon seasons in the Columbia River including the Willamette River downstream of Willamette Falls (including Multnomah Channel). Revisions are consistent with the action taken December 15, 2005 by the Columbia River Compact.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-017-0095
Sturgeon Season

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon three days per week, Thursday, Friday and Saturday, during the following periods:

(a) Sunday, January 1, 2006 through Monday, July 31, 2006, and

(b) Sunday, October 1, 2006 through Sunday, December 31, 2006.

(3) The retention of sturgeon in the area identified in subsection (2) is prohibited August 1, 2006 through September 30, 2006.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06

635-023-0095
Sturgeon Season

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Sunday, January 1, 2006 through Monday, July 31, 2006, and

(b) Sunday, October 1, 2006 through Sunday, December 31, 2006.

(3) The retention of sturgeon in the area identified in subsection (2) is prohibited August 1, 2006 through September 30, 2006.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of sturgeon seven days per week during the following periods:

(a) Sunday, January 1, 2006 through Sunday, April 30, 2006, and

(b) Saturday, May 13, 2006 through Tuesday, July 4, 2006.

(5) The retention of sturgeon in the area identified in subsection (4) is prohibited May 1, 2006 through May 12, 2006 and again from July 5, 2006 through December 31, 2006.

(6) During the fishing period as identified in section (4)(b) of this rule, only sturgeon 45-60" in overall length may be retained.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06

635-042-0130
Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River from 7:00 a.m. to 4:00 p.m. on the following dates: January 2, January 5, January 9, January 12, January 16, January 19, January 23, January 26, January 30, February 2, February 6, February 9, February 13, February 16, February 20, February 23, February 27, March 2, March 6, March 9, March 13, March 16, March 20, March 23, March 27 and March 30, 2006.

(2) It is *unlawful* to use other than the following gear for the taking of smelt in the Columbia River:

(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is unlawful to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f, 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06

635-042-0133
Sturgeon Size

(1) White or green sturgeon between 48 inches and 60 inches in overall length may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon and sturgeon fishing seasons with the same fishing gear authorized for the taking of salmon or sturgeon.

(2) Length of a commercially caught sturgeon shall be defined as the shortest distance between the tip of the nose and the extreme tip of the tail while the fish lies on its side on a flat surface with its tail in a normal position.

(3) It is unlawful to:

(a) Mutilate or disfigure a sturgeon in any manner which extends or shortens its length to the legal limit, or to possess such sturgeon;

(b) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(c) Have in possession any white or green sturgeon smaller than 48 inches or larger than 60 inches.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06

635-042-0135
Sturgeon Season

(1) Sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Sturgeon and salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Adipose fin-clipped salmon and sturgeon only may be sold from this fishery. The open fishing periods are:

(a) 6:00 p.m. January 10 to 6:00 p.m. January 11, 2006;

(b) 6:00 p.m. January 17 to 6:00 p.m. January 18, 2006;

(c) 6:00 p.m. January 24 to 6:00 p.m. January 25, 2006;

(d) 6:00 p.m. January 31 to 6:00 p.m. February 1, 2006;

(e) 6:00 p.m. February 7 to 6:00 p.m. February 8, 2006;

(f) 6:00 p.m. February 14 to 6:00 p.m. February 15, 2006; and

(g) 6:00 p.m. February 21 to 6:00 p.m. February 22, 2006.

(3) Sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(4) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white or green sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(5) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (2) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp.), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06

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Adm. Order No.: DFW 146-2005(Temp)
Filed with Sec. of State: 12-20-2005
Certified to be Effective: 12-20-05 thru 1-31-06
Notice Publication Date:
Rules Amended: 635-051-0070
Subject: Rules are needed to allow and regulate public hunting access on Port of Morrow lands.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-051-0070
Regulated Hunting Areas

Game Bird hunting is allowed within the Port of Morrow Cooperative Access Area seven days a week. Waterfowl hunting parties shall maintain at least 200 yards distance from other hunting parties. The following is prohibited:

(1) Driving or being transported by motor vehicle anywhere other than open roads,

(2) Digging in agricultural fields or adjacent lands to construct pit blinds or to conceal temporary blinds;

(3) Entering into the area from 10 p.m. to 4 a.m.;

(4) Leaving decoys set out from 10 p.m. to 4 a.m.;

(5) Hunting in any safety zone created and posted by ODFW;

(6) Entering any "NO PUBLIC ACCESS" or other closed areas;

(7) Building or using open fires;

(8) Using rifles, handguns or shotguns with slugs;

(9) Leaving litter or empty shotgun shells on the hunt area.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 50-1983(Temp), f. & ef. 9-30-83; FWC 51-1984, f. & ef. 9-5-84; FWC 74-1984(Temp), f. & ef. 11-1-84; FWC 64-1985, f. & ef. 10-2-85; FWC 58-1986, f. & ef. 9-17-86; FWC 82-1987, f. & ef. 9-22-87; FWC 80-1988, f. & cert. ef. 9-2-88; FWC 105-1989, f. & cert. ef. 9-29-89; FWC 92-1990, f. & cert. ef. 9-4-90; FWC 98-1991, f. & cert. ef. 9-9-91; FWC 80-1992, f. & cert. ef. 8-26-92; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 58-1994, f. & cert. ef. 9-1-94; FWC 71-1995, f. & cert. ef. 8-31-95; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 63-1996(Temp), f. 11-8-96, cert. ef. 11-9-96; FWC 45-1997, f. & cert. ef. 8-13-97; FWC 53-1997, f. & cert. ef. 9-3-97; DFW 146-2005(Temp), f. & cert. ef. 12-20-05 thru 1-31-06

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Adm. Order No.: DFW 147-2005(Temp)
Filed with Sec. of State: 12-28-2005
Certified to be Effective: 1-1-06 thru 6-28-06
Notice Publication Date:
Rules Amended: 635-004-0019
Subject: Amend rule to adopt inseason actions implemented by the federal government for commercial fisheries including adjustment to Rockfish Conservation Area (RCA) boundaries and commercial trip limit tables.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-004-0019
Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations**, **Title 50**, **Part 660**, **Subpart G**, West Coast Groundfish Fisheries.

(2) The **Code of Federal Regulations (CFR)**, **Title 50**, **Part 660**, **Subpart G**, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-05-12, announced inseason management measures, effective January 1, 2006, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries and commercial trip limit tables.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06

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Adm. Order No.: DFW 148-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 12-29-05
Notice Publication Date: 10-1-05
Rules Amended: 635-110-0000
Subject: Amended those portions of the Oregon Wolf Conservation and Management Plan that called for legislative action. These changes moved certain portions of the Plan (the proposals for legislative action, and references to those proposals) to an appendix. The date reference of the Plan and rule was updated to read December 2005.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-110-0000
Wolf Conservation and Management Plan

The document entitled "Oregon Wolf Conservation and Management Plan" dated December, 2005 is incorporated here by reference as administrative rule. Copies may be obtained at the Salem headquarters office of the Oregon Department of Fish and Wildlife, 3406 Cherry Avenue NE, Salem, OR 97303. This document includes program direction, objectives and strategies to fulfill management, research, and habitat needs. It is also intended as an informational document to assist resource management agencies with their wildlife program. As of December, 2005, those portions of the plan which authorize harassment or take of wolves are pre-empted by the endangered status of the gray wolf under the federal Endangered Species Act. Once federal protections are reduced to a level below that of Oregon law, those portions of the plan will govern harassment and take of wolves in Oregon.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.171-.496.192, 497.298, 497.308, 498.002, 498.006 & 498.012
Hist.: DFW 12-2005, f. & cert. ef. 3-9-05; DFW 148-2005, f. & cert. ef. 12-29-05

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Rule Caption: Schedule of Damages used in assessing 2006 commercial fishing violations.
Adm. Order No.: DFW 1-2006
Filed with Sec. of State: 1-9-2006
Certified to be Effective: 1-9-06
Notice Publication Date: 12-1-05
Rules Amended: 635-006-0232
Subject: By statute the ODFW Commission is required to establish the average market value of each species of food fish for the year. These market values are used for the purpose of recovering damages associated with unlawful take of food fish.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-006-0232
Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2006 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:
(A) Anchovy, Northern $0.01;
(B) Cabezon, $3.54;
(C) Carp $0.10 (1995 price);
(D) Cod, Pacific $0.46;
(E) Flounder, arrowtooth $0.10;
(F) Flounder, starry $0.38;
(G) Greenling, $4.57;
(H) Grenadier $0.10;
(I) Hagfish $0.44;
(J) Hake, Pacific (Whiting) $0.05;
(K) Halibut, Pacific, dressed weight with head on $2.87;
(L) Herring, Pacific $0.08;
(M) Lingcod, $1.71;
(N) Mackerel, jack $0.03, Pacific $0.03;
(O) Opah $1.00;
(P) Pacific ocean perch, $0.47;
(Q) Pollock, Walleye $0.67 (2001 price);
(R) Rockfish:
(i) Black, $1.57;
(ii) Blue, $1.53;
(iii) Canary, using trawl gear $0.50, using line and pot gear, $.074;
(iv) Darkblotched, $0.43;
(v) Nearshore, $6.24;
(vi) Shelf, $0.46;
(vii) Shortbelly, using trawl gear $0.29 (2003 price);
(viii) Slope, using trawl gear, $0.48 using line and pot gear $0.54;
(ix) Widow $0.43;
(x) Yelloweye, using trawl gear $0.51, using line and pot gear $0.90;
(xi) Yellowtail, using trawl gear $0.48, using line and pot gear $0.83 and live $1.56 (2004 price).
(S) Sablefish:
(i) Dressed weight, ungraded $3.06, extra small $1.99, small $2.99, medium $3.67 and large $3.91;
(ii) Round weight, ungraded $1.65, extra small $0.73, small $0.98, medium $1.29 and large $1.73.
(T) Salmon, Chinook, Ocean dressed weight: large $3.08, medium $3.16, small $3.79 and mixed size $3.30;
(U) Salmon, coho, Ocean dressed weight: mixed size $1.87;
(V) Salmon, pink, ocean dressed weight, ungraded, $1.25;
(W) Sanddab, Pacific $0.36;
(X) Sardine, Pacific $0.06;
(Y) Shad, American:
(i) Coast, ungraded, gill net and set net, $0.30 (2003 price);
(ii) Columbia, ungraded $0.21;
(iii) Midwater trawl $0.01.
(Z) Shark, blue $0.82, Pacific sleeper $0.62 (2000 price), shortfin mako $1.10, sixgill, $0.50 (2001 price), soupfin $0.53, spiny dogfish $0.15, scalloped hammerhead $0.12 (2001 price), silky $0.18 (2001 price), thresher dressed weight $1.50 (1995 price) and round weight $0.70 and other species $0.10 (2004 price);
(AA) Skates and Rays $0.16;
(BB) Smelt, Eulachon (Columbia River), $1.77 and other species $2.00 (2004 price);
(CC) Sole, butter $0.32, curlfin (turbot) $0.33, Dover $0.37, English $0.32, flathead $0.31, petrale $0.91, rex $0.40, rock $0.34 and sand $0.64;
(DD) Steelhead $0.29;
(EE) Sturgeon, green $0.83 and white $1.76;
(FF) Surfperch $0.93;
(GG) Swordfish $3.25 (2003 price);
(HH) Thornyhead (Sebastolobus), longspine $0.57 and shortspine $0.70;
(II) Tuna, albacore $1.09, bluefin $2.50 (2004 price) and yellowfin $0.73 (2001 price);
(JJ) Walleye $3.24 (2004 price);
(KK) Wolf-eel $0.44;
(LL) Wrymouth $0.18.
(b) CRUSTACEANS:
(A) Crab: box $1.11 (2002 price), Dungeness bay $2.70 and ocean $1.50, rock $1.49 and Tanner $0.69 (2003 price);
(B) Crayfish $1.65;
(C) Shrimp: brine $1.00, coonstripe $3.60 (2004 price), ghost (sand) $1.99, mud $1.24, pink $0.44 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot $9.03;
(D) Water flea (Daphnia) $0.65 (2002 price).
(c) MOLLUSKS:
(A) Abalone, flat $16.21;
(B) Clams: butter $0.30, cockle $0.45, gaper $0.41, littleneck $2.00, razor $2.29 and softshell $2.40;
(C) Mussels, ocean $0.65;
(D) Octopus $0.77;
(E) Scallop, rock $0.70;
(F) Scallop, weathervane dressed weight (shucked) $5.73 (2002 price) and round weight $0.55 (2002 price);
(G) Squid $0.22.
(d) OTHER INVERTEBRATES:
(A) Jellyfish $10.00 (2004 price);
(B) Sea cucumber $0.30;
(C) Sea urchin, red $0.31 and purple $0.30 (2004 price);
(D) Sea stars $1.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds $300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.720
Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06

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Rule Caption: Adoption of fish passage rules to define requirements and to clarify and streamline process.
Adm. Order No.: DFW 2-2006
Filed with Sec. of State: 1-9-2006
Certified to be Effective: 1-9-06
Notice Publication Date: 12-1-05
Rules Adopted: 635-412-0005, 635-412-0015, 635-412-0035, 635-412-0040
Rules Amended: 635-412-0020, 635-412-0025
Subject: It is the policy of the State to provide for upstream and downstream passage for native migratory fish. Consistent with this purpose, these rules address statutory needs, establish criteria for fish passage and altneratives to fish passage, streamline the fish passage approval process, and provide clarification of actions (i.e., “triggers”) that require an owner or operator of an artificial obstruction to address fish passage.
Rules Coordinator: Tina Edwards—(503) 947-6033

635-412-0005
Definitions

(1) For the purposes of OAR 635-412-0010 through 635-412-0040 the following definitions shall apply.

(2) “Active channel width” means the stream width between the ordinary high water lines, or at the channel bankfull elevation if the ordinary high water lines are indeterminate.

(3) “Artificial obstruction” means any dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

(4) “Attraction flow” means the flow that emanates from or near a fishway entrance in sufficient quantity, velocity, and location to attract upstream migrants into the fishway, which can consist of gravity flow from the fish ladder and auxiliary water system flow added in or near the lower ladder.

(5) “Bankfull elevation” means the point on a stream bank at which overflow into a floodplain begins.

(6) “Bed” or “bed and banks” means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and on bays and estuaries by the limits of the highest measured tide.

(7) “Channel” means a waterway that periodically or continuously contains moving waters of this state and has a definite bed and banks that serve to confine the water.

(8) “Commission” means the Oregon Fish and Wildlife Commission.

(9) “Construction” means:

(a) Original construction;

(b) Major replacement, which includes:

(A) for dams and diversions, excavation or replacement of 30 percent by structure volume of the dam, including periodic or seasonal replacements, unless:

(i) Only checkboards are replaced; or

(ii) Fish passage approval has already been obtained in writing from the Department for expected replacement.

(B) For tide gates and flood gates:

(i) Cumulative replacement of over 50 percent of the gate material; or

(ii) Cumulative removal, fill, replacement, or addition of over 50 percent of the structure supporting the gate, excluding road-stream crossing structures.

(C) For dikes, berms, levees, roads, or other artificial obstructions that segment estuaries, floodplains, or wetlands:

(i) Activities defined under OAR 635-412-0005(9)(d) in all locations where current channels cross the artificial obstruction segmenting the estuary, floodplain, or wetland; or

(ii) The cumulative removal, fill, replacement, or addition of over 50 percent by volume of the existing material directly above an historic channel or historically-inundated area; and

(D) For other artificial obstructions, the cumulative removal, fill, replacement, or addition of over 50 percent of the structure comprising the artificial obstruction to native migratory fish migration;

(c) Structural modifications that increase storage or diversion capacity; or

(d) For purposes of culverts, installation or replacement of a roadbed or culvert, further defined as:

(A) Roadbed installation or replacement at culverts includes any activity that:

(i) Creates a road which crosses a channel;

(ii) Widens a roadfill footprint within a channel; or

(iii) Fills or removes over 50 percent by volume of the existing roadbed material directly above a culvert, except when this volume is exclusively composed of the top 1 foot of roadbed material.

(B) Culvert installation or replacement includes any activity that:

(i) Installs or constructs a new culvert, overflow pipe, apron, or wingwall within a channel;

(ii) Extends existing culverts, aprons, or wingwalls within a channel, except one-time placements of culvert ends which do not extend greater than 1 foot beyond the adjacent road footprint in place prior to August 2001;

(iii) Cumulatively through time makes significant repairs or patches to over 50 percent of the linear length of a culvert;

(iv) Replaces any part of a culvert, except ends which become misaligned or eroded and which are replaced to their original configuration;

(v) At any point along the linear length of a culvert, reduces the entire inside perimeter of the culvert; or

(vi) Makes replacements, repairs, patches, or modifications to an existing culvert that are different than the original configuration and which reduce any level of fish passage for native migratory fish with current access, as determined by the Department, to the culvert.

(10) “Dam” means a structure, or group of structures with different functions, spanning or partially-spanning a stream in one location in order to pool water, facilitate the diversion of water, or raise the water surface elevation.

(11) “Department” means the Oregon Department of Fish and Wildlife.

(12) “Director” means the Director of the Oregon Department of Fish and Wildlife.

(13) “Design streamflow range” means the range of flows within a stream, bracketed by the Low Fish Passage Design Flow and the High Fish Passage Design Flow, for which a fishway shall provide fish passage.

(14) “Emergency” means unforeseen circumstances materially related to or affected by an artificial obstruction that, because of adverse impacts to a population of native migratory fish, requires immediate action.

(15) “Estuary” means a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. “Estuary” includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, for the purposes of these rules, the Columbia River Estuary extends to the western edge of Puget Island.

(16) “Exclusion barrier” means a structure placed that prevents fish passage for the benefit of native migratory fish.

(17) “Experimental fish passage structure” means a fish passage structure based on new ideas, new technology, or unique, site-specific conditions determined by the Department to not be covered by existing fish passage criteria but to have a reasonable possibility of providing fish passage.

(18) “Fish passage” means the ability, by the weakest native migratory fish and life history stages determined by the Department to require passage at the site, to move volitionally, with minimal stress, and without physical or physiological injury upstream and downstream of an artificial obstruction.

(19) “Fish passage structure” means any human-built structure that allows fish passage past an artificial obstruction, including, but not limited to, fishways and road-stream crossing structures such as culverts and bridges.

(20) “Fishway” means the set of human-built and/or operated facilities, structures, devices, and measures that together constitute, are critical to the success of, and were created for the sole purpose of providing upstream fish passage at artificial or natural obstructions which create a discontinuity between upstream and downstream water or bed surface elevations.

(21) “Fishway entrance” means the component of a fishway that discharges attraction flow into the tailrace and where upstream migrant fish enter the fishway.

(22) "Fishway pools" means discrete sections within a fishway separated by overflow weirs or non-overflow walls that create incremental water surface elevation gains and dissipate energy.

(23) "Floodplain" means that portion of a river valley, adjacent to the channel, which is built of sediments deposited during the present regimen of the stream and which is covered with water when the waterway overflows its banks at flood stage.

(24) "Forebay" means the water impounded immediately upstream of an artificial obstruction.

(25) "Fundamental change in permit status" means a change in regulatory approval for the operation of an artificial obstruction where the regulatory agency has discretion to impose additional conditions on the applicant, including but not limited to licensing, relicensing, reauthorization or the granting of new water rights, but not including water right transfers or routine maintenance permits unless they involve construction or abandonment of an artificial obstruction.

(26) "High fish passage design flow" means the mean daily average stream discharge that is exceeded 5 percent of the time during the period when the Department determines that native migratory fish require fish passage.

(27) "Historically" means prior to 1859 (statehood).

(28) "Inflow" means surface movement of waters of this state from a lower ground surface elevation to a higher ground surface elevation or away from the ocean.

(29) "In-proximity" means within the same watershed or water basin, as defined by the Oregon Water Resources Department, and having the highest likelihood of benefiting the native migratory fish populations, as defined by the Oregon Department of Fish and Wildlife, directly affected by an artificial obstruction.

(30) "Low fish passage design flow" means the mean daily average stream discharge that is exceeded 95 percent of the time, excluding days with no flow, during the period when the Department determines that native migratory fish require fish passage.

(31) "Mitigation" means alternatives to providing fish passage at an artificial obstruction as per ORS 509.585.

(32) "Native migratory fish" means native fish (as defined under OAR 635-007-0501) that migrate for their life cycle needs. These fish include all sub-species and life history patterns of the following species listed by scientific name in use as of 2005. Common names are provided for reference but are not intended to be a complete listing of common names, sub-species, or life history patterns for each species.

(a) Acipenser medirostris — Green Sturgeon;

(b) Acipenser transmontanus — White Sturgeon;

(c) Amphistichus rhodoterus — Redtail surfperch;

(d) Catostomus columbianus — Bridgelip sucker;

(e) Catostomus luxatus/Deltistes luxatus — Lost River sucker;

(f) Catostomus macrocheilus — Largescale sucker;

(g) Catostomus microps — Modoc sucker;

(h) Catostomus occidentalis — Goose Lake sucker;

(i) Catostomus platyrhynchus — Mountain sucker;

(j) Catostomus rimiculus — Klamath smallscale sucker;

(k) Catostomus snyderi — Klamath largescale sucker;

(l) Catostomus tahoensis — Tahoe sucker;

(m) Catostomus warnerensis — Warner sucker;

(n) Chasmistes brevirostris — Shortnose sucker;

(o) Hypomesus pretiosus — Surf smelt;

(p) Lampetra ayresi — River lamprey;

(q) Lampetra lethophaga — Pit-Klamath lamprey;

(r) Lampetra minima — Miller Lake lamprey;

(s) Lampetra similes — Klamath River lamprey;

(t) Lampetra tridentate — Pacific lamprey;

(u) Oncorhynchus clarki — Coastal, Lahontan and West Slope cutthroat trout;

(v) Oncorhynchus keta — Chum salmon;

(w) Oncorhynchus kisutch — Coho salmon;

(x) Oncorhynchus mykiss — Steelhead, Rainbow and Redband trout;

(y) Oncorhynchus nerka — Sockeye/Kokanee salmon;

(z) Oncorhynchus tshawytscha — Chinook salmon;

(aa) Prosopium williamsoni — Mountain whitefish;

(bb) Ptychocheilus oregonensis — Northern pikeminnow;

(cc) Ptychocheilus umpquae — Umpqua pikeminnow;

(dd) Salvelinus confluentus — Bull trout;

(ee) Spirinchus thaleichthys — Longfin smelt;

(ff) Thaleichthys pacificus — Eulachon.

(33) "Net benefit" means an increase in the overall, in-proximity habitat quality or quantity that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measures have been completed.

(34) "Ordinary high water line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season.

NOTE: see OAR 141-085-0010 for physical characteristics that can be used to determine the OHWL in the field.

(35) "Oregon Plan" means the guidance statement and framework described in ORS 541.405.

(36) "Over-crowding" means fish density within a pool's wetted volume is such that there is less than 0.25 cubic feet of water per pound of fish for the maximum number of fish expected to be present within the pool at the same time, as determined by the Department.

(37) "Road" means a cleared or built surface, and associated materials or measures for support and safety, used for the purpose of motorized or non-motorized movement between different locations.

(38) "Roadfill footprint" means the area occupied by soil, aggregate, and/or other materials or structures necessary to support a road, including, but not limited to, appurtenant features such as wing walls, retaining walls, or headwalls.

(39) "Stream" means a body of running waters of this state moving over the surface of the land in a channel or bed including stream types classified as perennial or intermittent and channelized or relocated streams.

(40) "Sub-basin" means a 4th-field hydrologic unit as defined by the U.S. Geological Survey.

(41) "Tailrace" means the water immediately downstream of an instream structure.

(42) "Temporary" means in place less than the in-water work period defined by the Department for a particular location.

(43) "Trap" means the set of human-built and/or operated facilities, structures, devices, and measures that hold fish and prevent them from passing volitionally.

(44) "Unforeseen circumstances" means:

(a) An event that causes an existing human-made structure in the waters of the state which provides fish passage to become an artificial obstruction; or

(b) New fish population information indicating that an existing artificial obstruction is placing a local native migratory fish population in jeopardy.

(45) "Volitionally" means with minimal delay and without being trapped, transferred, or handled by any person, unless specifically allowed under OAR 635-412-0035(6).

(46) "Waters of this state" means natural waterways including all tidal and non-tidal bays, intermittent and perennial streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and non-navigable, including that portion of the Pacific Ocean that is within the boundaries of Oregon.

(47) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Stat. Auth.: ORS 496.138
Stats. Implemented: ORS 509.580, 509.585, 509.610 & 509.625
Hist.: DFW 2-2006, f. & cert. ef. 1-9-06

635-412-0015
Prioritization

(1) The Department shall establish for enforcement purposes a list of priority artificial obstructions at which fish passage would provide the greatest benefit to native migratory fish.

(2) The priority list shall be based on the needs of native migratory fish.

(a) The prioritization shall consider the following factors relative to each artificial obstruction for all native migratory fish currently or historically present at the artificial obstruction:

(A) The quantity of native migratory fish habitat which is inaccessible;

(B) The quality of native migratory fish habitat which is inaccessible;

(C) Unique or limited native migratory fish habitat which is inaccessible, or should remain inaccessible for fish management purposes;

(D) The biological status of the native migratory fish;

(E) The level of fish passage currently provided at the artificial obstruction;

(F) The presence of other artificial obstructions upstream and downstream and the timeframe native migratory fish will be able to utilize restored passage; and

(G) Existing agreements with the Department regarding fish passage.

(b) The prioritization may utilize existing Department information or professional judgment in the absence of information specific to a given site.

(c) The priority list shall contain one artificial obstruction per Oregon sub-basin, which shall be ranked across the state.

(d) The Department shall field verify the information used for prioritization prior to enforcement actions.

(e) The Department shall re-evaluate the priority list with the most recent information after enforcement occurs at five priority artificial obstructions or as directed by the Commission.

(3) The Commission shall review, approve, or amend the priority list after the initial priority list is developed, when the Department re-prioritizes, and no less frequently than once every five years.

(4) Once the Commission has approved the priority list, the Department may order a person owning or operating an artificial obstruction on the priority list who has been issued a water right, owns a lawfully installed culvert or owns another lawfully installed obstruction to install fish passage or to provide mitigation if:

(a) The Department can arrange for non-owner or non-operator funding of at least 60 percent of the cost for fish passage design, construction, and installation; and

(b) The artificial obstruction is ranked in the top ten for the state or highest within a Department Region on the priority list.

(5) Once the Department has arranged for non-owner or non-operator funding of at least 60 percent of the cost for fish passage design, construction, and installation at an artificial obstruction the owner or operator has two years to:

(a) Install a fish passage structure according to a fish passage plan approved by the Department; or

(b) Provide mitigation that the Commission determines is a net benefit to native migratory fish.

Stat. Auth.: ORS 496.138
Stats. Implemented: ORS 509.585 & 509.625
Hist.: DFW 2-2006, f. & cert. ef. 1-9-06

635-412-0020
Fish Passage Approval

(1) No person shall construct or maintain any artificial obstruction across any waters of this state that are inhabited, or were historically inhabited, by native migratory fish without providing passage for native migratory fish.

(2) Prior to construction, fundamental change in permit status or abandonment of an artificial obstruction in any waters of this state, a person owning or operating an artificial obstruction shall obtain a determination from the Department as to whether native migratory fish are or were historically present in the waters, unless the owner or operator assumes the presence of native migratory fish.

(3) If the Department determines, or the owner or operator assumes, that native migratory fish are or were historically present in the waters, prior to construction, fundamental change in permit status, or abandonment of the artificial obstruction the person owning or operating the artificial obstruction shall either:

(a) Obtain from the Department an approval determination of a fish passage plan that meets the requirements of OAR 635-412-0035 for the specific artificial obstruction.

(b) Obtain from the Department a programmatic approval of a fish passage plan for multiple artificial obstructions of the same type. The Department may also grant programmatic approval to an agent for multiple owners or operators of artificial obstructions of the same type. Programmatic approvals are only valid so long as the owner or operator complies with the conditions of the programmatic approval. The Department shall only provide programmatic approval if:

(A) Fish passage structures placed under the programmatic approval meet criteria determined by the Department;

(B) The owner, operator, or agent demonstrates to the Department prior experience providing or approving acceptable fish passage structures;

(C) The owner, operator, or agent reports installation information annually to the Department, including but not limited to the location and installation date of all fish passage structures placed under the programmatic approval;

(D) The owner or operator allows, or the agent requires owners or operators to allow, the Department to inspect fish passage structures placed under the programmatic approval at reasonable times; and

(E) The owner, operator, or agent agrees to expeditiously remedy all fish passage structures placed under the programmatic approval which the Department finds do not meet the criteria or conditions of the programmatic approval.

(c) Pursuant to ORS 527.710(6), install and maintain road-stream crossing structures on non-federal forestlands in compliance with State Board of Forestry, through the Oregon Department of Forestry, rules and guidelines. These rules and guidelines require concurrence by the Oregon Department of Fish and Wildlife that they meet the purposes of the Department's fish passage program;

(d) Obtain a waiver from fish passage requirements for the artificial obstruction as provided in OAR 635-412-0025; or

(e) Obtain an exemption from fish passage requirements for the artificial obstruction as provided in OAR 635-412-0025.

(4) Fish passage plans shall provide for and be implemented such that fish passage is installed at the artificial obstruction prior to completion of or by the end of the same in-water work period as the action which triggered fish passage requirements under subsection (2), unless:

(a) An owner or operator demonstrates to the Department an imminent or immediate threat to human safety which requires construction at a failed artificial obstruction prior to being able to complete the requirements of subsection (3), and the Department approves a fish passage plan in which the requirements of subsection (3) shall be met by the end of the next in-water work period or as soon as practicable. Providing passage at the time of construction is preferred;

(b) The Commission finds that additional time is necessary and appropriate given the size and scope of the project;

(c) Installation begins within this period and the Department finds that additional time to complete installation is necessary and appropriate given the size and scope of the project; or

(d) The Department finds that additional time is necessary and appropriate as part of the terms and conditions of a negotiated settlement for a federal proceeding, or in coordination with other federal requirements.

Stat. Auth.: ORS 496.138
Stats. Implemented: ORS 509.585 & 509.645
Hist.: DFW 23-2003, f. & cert. ef. 3-26-03; DFW 2-2006, f. & cert. ef. 1-9-06

635-412-0025
Fish Passage Waivers and Exemptions

(1) Waivers from fish passage requirements shall be granted for an artificial obstruction if the Commission (or Department, as applicable) determines that mitigation rather than fish passage proposed by the person owning or operating the artificial obstruction provides a net benefit to native migratory fish.

(2) Net benefit to native migratory fish is determined by comparing the benefit to native migratory fish that would occur if the artificial obstruction had fish passage to the benefit to native migratory fish that would occur using the proposed mitigation. To qualify for a waiver of the requirement to install fish passage, mitigation shall result in a benefit to fish greater than that provided by the artificial obstruction with fish passage. The net benefit to fish determination shall be based upon conditions that exist at the time of comparison.

(3) Waivers shall be valid so long as the owner or operator continues to provide the agreed-upon mitigation measures and until the waived artificial obstruction undergoes further construction, a fundamental change in permit status, or abandonment.

(4) The Commission (or Department as applicable) may grant exemptions from fish passage requirements at an artificial obstruction if it is determined that:

(a) A lack of fish passage has been effectively mitigated;

(b) The owner or operator has received a legal waiver for the artificial obstruction from the Commission or the Department; or

(c) There is no appreciable benefit to providing fish passage.

(5) For exemptions granted under subsection (4)(a) and (4)(b), the exemption continues only so long as the original benefit of the mitigation is maintained.

(6) The Commission shall review, at least once every seven years, exempt artificial obstructions that do not have exemption expiration date to determine whether the exemption should continue. The Commission may revoke or amend an exemption if it finds that circumstances have changed such that the basis for the exemption no longer applies. An exemption granted as a result of an action which triggered fish passage requirements under OAR 635-412-0020(2) tolls the trigger event until the exemption is revoked.

(7) To obtain a waiver or an exemption from fish passage requirements, an owner or operator of an artificial obstruction shall obtain from and submit to the Department an application for the waiver or exemption.

(8) Based on application review, verification and site-specific knowledge, Department staff shall provide a written benefit analysis of whether the waiver request meets the requirements of subsection (1) or the exemption request meets the requirements of subsections (4) and (5). If there is some level of fish passage at the artificial obstruction, but it does not meet the requirements of OAR 635-412-0035, that passage shall be factored into the Department's net benefit analysis, allowing a reduction in required mitigation.

(9) To receive a waiver, or an exemption under subsection (4)(a), an owner or operator of an artificial obstruction shall enter an agreement with the Commission (or Department as applicable) that clearly describes timelines, duties, responsibilities, and options regarding the mitigation. The

agreement shall state that the mitigation shall be completed prior to completion of or by the end of the same in-water work period as the action which triggered fish passage requirements under OAR 635-412-0020(2), unless the Commission finds that additional time is necessary and appropriate:

(a) Given the size and scope of the project; or

(b) To coordinate with requirements of federal proceedings.

(10) Once the application, analysis, and a draft agreement are completed, a decision on whether the waiver or exemption shall be granted shall be made by:

(a) The Department:

(A) If it determines that the total stream distance, including tributaries, affected by the artificial obstruction for which the waiver or exemption is being sought is less than or equal to 1 mile to a natural barrier;

(B) If the request is for an exemption under subsection (4)(a) or (4)(b); or

(C) For re-authorization of an existing hydroelectric project subject to ORS 543A.030 to 543A.055 and not subject to federal hydroelectric relicensing; and

(b) The Commission:

(A) In all other instances; or

(B) If the Department refers a decision to the Commission; or

(C) If the owner or operator files a protest of the Department's determination to the Commission.

(11) The decision to grant a waiver or exemption shall include the determination described in subsection (1) or (4) as well as approval of the agreement required in subsection (9).

(12) In addition to the Fish Passage Task Force as prescribed in OAR 635-412-0010(4)(e) and (g), the Department shall notify local watershed council(s), local soil and water conservation district(s), identified stakeholders, and others who have expressed an interest in fish passage issues or the specific waiver or exemption request and provide an opportunity to comment on the request at least three weeks prior to a decision on whether the waiver or exemption should be granted.

(13) The Commission (or Department, as applicable) may require further public comment prior to a decision on whether a waiver or exemption should be granted.

(14) The Department shall maintain a database of the locations of waived and exempted artificial obstructions and mitigation.

Stat. Auth.: ORS 496.138
Stats. Implemented: ORS 509.585 & 509.645
Hist.: DFW 23-2003, f. & cert. ef. 3-26-03; DFW 2-2006, f. & cert. ef. 1-9-06

635-412-0035
Fish Passage Criteria

(1) General requirements for fish passage are:

(a) Unless the owner or operator of an artificial obstruction chooses to provide year-round fish passage for all native migratory fish and life history stages, the Department shall determine:

(A) Native migratory fish currently or historically present at the site which require fish passage;

(B) Life history stages which require fish passage; and

(C) Dates of the year and/or conditions when passage shall be provided for the life history stages and native migratory fish.

(b) The person submitting the fish passage plan to the Department for approval shall submit all information necessary to efficiently evaluate whether the design will meet fish passage criteria;

(c) If site-specific circumstances indicate that the fish passage criteria are not adequate to provide fish passage, the Department may require in writing that additional fish passage criteria be met;

(d) If native migratory fish- or site-specific circumstances warrant it, the Department may provide an exception to any specific fish passage criterion if the Department determines in writing that fish passage shall still be provided;

(e) All fish passage structures shall be designed to take into consideration their upstream and downstream connection and prevent undesirable impacts to fish passage, including but not limited to scour and headcuts;

(f) If joint state and federal approval is required, the Department shall take into account federal requirements during approval;

(g) Primarily at sites with little existing site information or questionable design solutions, the Department may require monitoring and reporting to determine if a fish passage structure meets applicable criteria and/or is providing fish passage; and

(h) The person owning or operating an artificial obstruction shall maintain the fish passage structure in such repair and operation as to provide fish passage of native migratory fish at all times required by the Department.

(2) Requirements for fish passage at dams and other artificial obstructions which create a discontinuity between upstream and downstream water surface or streambed elevations are:

(a) Fishways shall provide fish passage at all flows within the design streamflow range;

(b) The fishway entrance shall be located and adequate attraction flow shall be provided at one or more points where fish can easily locate and enter the fishway;

(c) Fishway water velocities shall:

(A) Range between 1 and 2 feet per second in transport channels;

(B) Average no greater than 5 feet per second in baffled-chute fishways, including but not limited to Alaska steeppasses and denils; and

(C) Not exceed 8 feet per second in discrete fishway transitions between the fishway entrance, pools, and exit through which fish must swim to move upstream, including but not limited to slots, orifices, or weir crests.

(d) At any point entering, within, or exiting the fishway where fish are required to jump to move upstream, the maximum difference between the upstream and downstream water surface elevations shall be 6 inches, except it shall be 12 inches if only salmon or steelhead adults require fish passage;

(e) In fishway locations through which fish must swim, water depths shall be a minimum of 6 inches where only juveniles require passage and 12 inches where adults require passage, except:

(A) Baffled-chute fishways, including but not limited to Alaska steeppasses and denils, shall have a minimum flow depth of 2 feet throughout the length of the fishway; and

(B) Water depths shall be a minimum of 2 feet within jump pools which shall be located downstream of any point entering, within, or exiting the fishway where fish are required to jump to move upstream.

(f) All fishway locations through which fish must swim shall be at least 12 inches wide;

(g) Fishway pools shall:

(A) Be sized according to the native migratory fish and life history stages requiring passage and to avoid over-crowding;

(B) Have $V \geq wQH/4$ at all flows within the design streamflow range, where:

(i) "V" is the water volume in cubic feet;

(ii) "*w*" is 62.4, the unit weight of water, in pounds per cubic foot;

(iii) "Q" is the fish ladder flow in cubic feet per second;

(iv) "H" is the energy head of pool-to-pool flow in feet; and

(v) 4 has a unit of foot-pounds per second per cubic foot.

(C) Where the fishway bends 90 degrees or more, have turning pools with a flowpath centerline double the length of non-turning pools; and

(D) Be placed at least every 25 feet of horizontal distance in baffled-chute fishways, including but not limited to Alaska steeppasses and denils;

(h) The fishway exit should be located to minimize the risk of fish unintentionally falling downstream of the artificial obstruction;

(i) Fishway trash racks shall:

(A) Allow for easy maintenance and debris removal;

(B) Have a minimum clear space between vertical members of 9 inches, except:

(i) 10 inches shall be provided if adult chinook are present; and

(ii) At least 4 inches shall be provided if only juveniles are present; and

(C) Have a minimum clear space between horizontal members of 12 inches;

(j) The fishway shall:

(A) Have water temperatures which are within 1 degree Fahrenheit of the water entering the fishway;

(B) Be designed to assure that fish do not leap out of the fishway;

(C) Have all edges and fasteners which fish may contact ground smooth or chamfered;

(D) Not have protrusions extend into the flow path of the fishway;

(E) Have as much ambient lighting as possible;

(F) Have fishway components which are not detailed in OAR 635-412-0035(2), including but not limited to auxiliary water systems, designed considering the most recent National Marine Fisheries Service or U.S. Fish and Wildlife Service fish passage criteria and guidelines; and

(G) Meet the species-specific requirements in OAR 635-412-0035(7) if any of those native migratory fish require fish passage.

(k) Requirements for specific types of fishways include:

(A) Baffled-chute fishways, including but not limited to Alaska steeppasses and denils, shall not be used in areas where downstream passage will occur through the baffled-chute fishway;

(B) All fishways of a specific type with accepted configurations shall comply with those configurations; and

(C) Fish passage plans for stream channel-spanning weirs, roughened channels (including but not limited to nature-like, rock, or engineered-stream fishways), and hybrid fishways (including but not limited to pool-and-chute ladders) which may combine criteria elements of natural streams

and/or established fishway types (including but not limited to pool-and-weir, vertical slot, and baffled-chute fishways) shall clearly demonstrate how water depths, water velocities, water drops, jump pools, structure sizing, and fish injury precautions shall provide fish passage.

(l) For downstream fish passage:

NOTE: fish screening and bypass requirements for diverted water are separate from these requirements.

(A) Fish passage structures shall have an open water surface, except a submerged or enclosed conduit or orifice may be utilized if:

(i) Acceptable guidance or collection mechanisms are used and kept free from debris;

(ii) Water depth is greater than 4 inches during all flows;

(iii) Water velocity is greater than 2 feet per second during all flows;

(iv) Water is not pumped;

(v) Conduits have smooth surfaces and avoid rapid changes in direction to preclude fish impact and injury; and

(vi) Conduits are at least 10 inches wide.

(B) Plunging flow moving past an artificial obstruction via spillways, outlet pipes, or some other means which may contain fish shall:

(i) At all flows, fall into a receiving pool of sufficient depth, depending on impact velocity and quantity of flow, to ensure that fish and flow shall not impact the stream bottom or other solid features; and

(ii) Have a maximum impact velocity into a receiving pool, including vertical and horizontal velocity components, less than 25 feet per second; and

(C) Water depth over spillways shall be greater than 4 inches during all flows.

(3) Requirements for fish passage at road-stream crossing structures such as bridges and culverts are:

(a) Stream Simulation Option:

(A) Open-bottomed and closed-bottom road-stream crossing structures shall have beds under or within the structure that:

(i) Are equal to or greater than the active channel width, as measured at sufficient locations outside the influence of any artificial or unique channel constrictions or tributaries both upstream and downstream of the site;

(ii) Are equal to the slope of, and at elevations continuous with, the surrounding long-channel streambed profile, unless the Department approves maintaining a pre-existing road-impounded wetland;

(iii) Have, for open-bottomed road-stream crossing structures, a minimum of 3 feet vertical clearance from the active channel width elevation to the inside top of the structure;

(iv) Maintain average water depth and velocities that simulate those in the surrounding stream channel; and

(v) Are composed of material that:

(I) Assures the bed under or within the road-stream crossing structure is maintained through time;

(II) Is either natural (similar size and composition as the surrounding stream) or supplemented to address site-specific needs including, but not limited to, bed retention and hydraulic shadow;

(III) Contains partially-buried, over-sized rock if the road-stream crossing structure is greater than 40 feet in length;

(IV) Is mechanically placed during structure installation rather than allowed to naturally accumulate, unless the surrounding streambed is primarily bedrock; and

(V) Excluding partially-buried over-sized rock, is, for closed-bottom road-stream crossing structures, at a minimum depth of 20 percent of the structure height and a maximum depth of 50 percent of the structure height; and

(B) Trash racks shall not extend below the active channel width elevation and shall have a minimum of 9 inches clear spacing between vertical members; or

(b) Alternative Option: the Department may approve road-stream crossing structures for which clear justification is provided, based on fish performance and/or fish behavior data and hydraulic conditions, that the alternative design shall provide fish passage.

(4) Requirements for fish passage at artificial obstructions in estuaries, and above which a stream is present, are:

(a) Fish passage shall be provided at all current and historic channels;

(b) Fish passage structures shall meet the criteria of OAR 635-412-0035(2) or (3), except fish passage structures shall be sized according to the cumulative flows or active channel widths, respectively, of all streams entering the estuary above the artificial obstruction; and

(c) Tide gates and associated fish passage structures shall be a minimum of 4 feet wide and shall meet the requirements of OAR 635-412-0035(2) within the design streamflow range and for an average of at least 51% of tidal cycles, excluding periods when the channel is not passable under natural conditions.

(5) Requirements for fish passage at artificial obstructions in estuaries, floodplains, and wetlands, and above which no stream is present, are:

(a) Downstream Fish Passage:

(A) Downstream fish passage shall be provided after inflow which may contain native migratory fish;

(B) Downstream fish passage shall be provided until water has drained from the estuary, floodplain, or wetland, or through the period determined by the Department which shall be based on one, or a combination of, the following:

(i) A specific date;

(ii) Water temperature, as measured at a location or locations determined by the Department;

(iii) Ground surface elevation;

(iv) Water surface elevation; and/or

(v) Some other reasonable measure.

(C) Egress delays may be approved by the Department based on expected inflow frequency if there is suitable habitat and as long as passage is provided by the time the conditions in OAR 635-412-0035(5)(a)(B) occur;

(D) A minimum egress flow of 0.25 cubic feet per second (cfs) at one point of egress shall be provided;

(E) Egress flow of 0.5 cfs per 10 surface acres, for at least the first 100 surface acres of impounded water, shall be provided;

(F) All plunging egress flows shall meet the requirements of OAR 635-412-0035(2)(l)(B);

(G) If egress flow is provided by a pump, it shall be appropriately screened;

(H) The minimum water depth and width through or across the point of egress shall be 4 inches;

(I) The ground surface above the artificial obstruction shall be sloped toward the point(s) of egress to eliminate isolated pools; and

(J) An uninterrupted, open connection with a minimum water depth of 4 inches shall be present from the point of egress to the downstream waters of this state, unless another connection is provided as per OAR 635-412-0035(2)(l)(A).

(b) Upstream Fish Passage: a fishway or road-stream crossing structure with or without a tide gate shall be provided during the period determined by the Department if there is current or historic native migratory fish spawning or rearing habitat within the estuary, floodplain, or wetland area impounded by the artificial obstruction.

(6) Requirements for fish passage at traps are:

(a) A collection permit issued by the Department is required to operate all traps;

(b) Traps shall be constructed to prevent physical or physiological injury to native migratory fish;

(c) Traps shall meet all requirements of OAR 635-412-0035(2)(g);

(d) Traps located within a fishway (i.e., “in-ladder” traps) shall not inhibit native migratory fish from entering the fishway or trap and shall be removed if the Department determines that fish are not entering the trap;

(e) Native migratory fish shall be processed through traps with minimal possible delay and as frequently as necessary to avoid over-crowding;

(f) All native migratory fish, excluding those which have approved take authorization from the Department and which do not require fish passage as per OAR 635-412-0035(1)(a), shall be returned to the stream by one of the following methods:

(A) Movement from the trap to immediately-adjacent water which has fish passage; or

(B) Transport within a watered container, including but not limited to lifts, hoppers, locks, and trucks, from the trap to a location approved by the Commission.

(7) Additional requirements for specific native migratory fish are:

(a) *Acipenser* species (sturgeon):

(A) The fish passage structure shall not require fish to jump when entering, within, or exiting the structure;

(B) The fish passage structure, including trash racks, shall be sized to accommodate the largest individual expected to require fish passage; and

(C) Non-volitional transport within a watered container shall be allowed with Department approval.

(b) *Catostomus* and *Chasmistes* species (suckers):

(A) The fish passage structure shall not require fish to jump when entering, within, or exiting the structure;

(B) Fishways shall have a maximum water velocity of 4 feet per second;

(C) Fishways shall have a minimum water depth of 12 inches;

(D) Fishways shall maximize downstream flow between pools to avoid back eddies;

(E) Fishways shall have curved walls within turning pools; and

(F) Fishways shall have a slope less than 4 percent.

(c) *Lampetra* species (lamprey):

(A) Fishways shall not have overhanging surfaces;

(B) Fishways shall have rounded or chamfered edge surfaces over which *Lampetra* species may pass;

(C) Fishways shall, in locations with water velocities greater than 2 feet per second, have a passage route that:

(i) Has a smooth, impermeable, uninterrupted surface or a simulated streambed;

(ii) Has water velocities over the structure's surface less than 8 feet per second; and

(iii) Is wetted.

(d) *Oncorhynchus* species (trout and salmon): fish passage structures for *Oncorhynchus keta* (chum) shall not require fish to jump when entering, within, or exiting the structure.

(e) *Ptychocheilus* species (pikeminnow): fish passage structures shall meet the requirements of OAR 635-412-0035(7)(a).

(f) If more than one native migratory fish species requires passage at a site and the requirements for the different species are mutually exclusive, the Department shall determine passage criteria.

(8) Requirements for artificial obstruction removal are:

(a) Artificial obstruction removals shall follow the requirements of OAR 635-412-0035(10);

(b) If not completely removed, no parts of the remaining artificial obstruction shall:

(A) Constrict the stream channel; or

(B) Cause low flow depths less than the surrounding stream channel.

(c) After an artificial obstruction is removed the stream channel shall be restored; and

(d) The stream channel restoration shall address impacts to stream habitat caused by the artificial obstruction while in place and by its removal, including but not limited to upstream and downstream channel degradation, and provisions shall be made to address unexpected fish passage issues resulting from removal.

(9) Requirements for exclusion barriers are:

(a) Exclusion barriers shall only be placed in the following situations, when fish passage is not required or is provided by other means:

(A) To guide fish to an approved fish passage structure or trap;

(B) To prevent fish from leaving waters of this state and entering human-made water supply conduits;

(C) To prevent fish from entering waters of this state associated with operations of another artificial obstruction that could lead to fish injury; or

(D) To achieve other fish management objectives approved in writing by the Department; and

(b) Exclusion barriers shall comply with National Marine Fisheries Service or U.S. Fish and Wildlife Service criteria.

(10) Requirements for fish passage during construction of fish passage structures and periods when temporary artificial obstructions are in place are:

(a) All fish passage structures shall be constructed and temporary artificial obstructions shall be in place only during the site-specific in-water work period defined or approved by the Department;

(b) At times indicated by the Department as per OAR 635-412-0035(1)(a), downstream fish passage shall be provided and:

(A) The outfall of a stream flow bypass system shall be placed to provide safe reentry of fish into the stream channel; and

(B) If downstream fish passage during construction is not required and stream flow is pumped around the site, the site shall meet Department screening and/or bypass requirements.

(c) At times indicated by the Department as per OAR 635-412-0035(1)(a), upstream fish passage shall be provided and shall be based on the wetted-width or flows of the stream during the period of construction or temporary obstruction;

(d) In-stream construction sites shall be isolated from stream flow and fish;

(e) Prior to in-stream construction activities, all fish shall be safely collected, removed from the construction site or de-watered reach, and placed in the flowing stream by an authorized person with a collection permit issued by the Department; and

(f) After construction, the construction site shall be re-watered in a manner to prevent loss of downstream surface water as the construction site's streambed absorbs water.

(11) Requirements for experimental fish passage structures are:

(a) Experimental fish passage structures shall only be allowed in waters of the state after:

(A) Laboratory testing with native migratory fish or similar species indicates that the structure is feasible to provide fish passage;

(B) Field testing with a prototype structure, at a location where existing fish passage will not be compromised and where fish passage does not need to be addressed under OAR 635-412-0020(2) and (3), indicates that the structure is likely to provide fish passage; and

(C) In addition to information needed to evaluate the structure's design for the specific location, the following are submitted to the Department and approved:

(i) A written summary of the laboratory and field testing and how the results indicate that fish passage shall be provided;

(ii) A monitoring and reporting plan to determine if the installed experimental fish passage structure meets applicable design objectives and is providing fish passage; and

(iii) A modification plan for the experimental fish passage structure if monitoring indicates that fish passage is not being provided, including standard thresholds that will initiate these modifications.

(b) If at any time an experimental fish passage structure is deemed by the Department in writing to not provide fish passage, the owner or operator, in consultation with the Department, shall make such modifications to the structure or operation as are necessary to provide fish passage, and, after a reasonable period, if modifications are deemed by the Department in writing to not provide fish passage, a fish passage structure that meets the standard criteria of OAR 635-412-0035 shall be installed as soon as practicable but no later than the end of the next complete in-water work period after notification by the Department;

(c) The owner or operator of an experimental fish passage structure shall allow the Department to inspect experimental fish passage structures at reasonable times;

(d) Five years after the experimental fish passage structure is installed and fish are present to attempt passage a final monitoring report shall be submitted to the Department and the Department shall determine if the experimental fish passage structure provides fish passage;

(e) If the Department determines that the experimental fish passage structure does not provide fish passage, a fish passage structure that meets the standard criteria of OAR 635-412-0035 shall be installed as soon as practicable but no later than the end of the next complete in-water work period after notification by the Department; and

(f) After three experimental fish passage structures of the same design concept are placed in waters of the state and deemed to provide fish passage by the Department, the experimental fish passage structure shall no longer be considered experimental.

Stat. Auth.: ORS 496.138
Stats. Implemented: ORS 509.585 & 509.610
Hist.: DFW 2-2006, f. & cert. ef. 1-9-06

635-412-0040
Mitigation Criteria

(1) Mitigation shall not be allowed for artificial obstructions located in, or which would prevent access to, "Habitat Category 1" habitat for native migratory fish as described in OAR 635-415-0025(1).

(2) Mitigation options include:

(a) Providing fish passage at another pre-existing artificial obstruction which is not required to address fish passage under OAR 635-412-0015 or 635-412-0020;

(b) Restoration or enhancement of native migratory fish habitat;

(c) Fish management measures to directly increase naturally-producing, wild, native migratory fish populations; and

(d) Other actions specifically approved by the Commission.

(3) Mitigation shall not include any activity that is a requirement or condition of any other agreement, law, permit, or authorization except if it is also for fish passage mitigation of the same action at the artificial obstruction for a different level of government.

(4) Unless a fish passage waiver for a site has already been obtained and mitigation has been provided, mitigation activities shall not be completed prior to a decision regarding a fish passage waiver.

(5) The Department shall approve final mitigation designs in writing prior to implementation.

NOTE: mitigation actions or concepts, absent specific designs, can be approved at the time a waiver decision is made.

(6) Mitigation actions that provide fish passage shall meet the fish passage criteria contained in OAR 635-412-0035.

(7) The Commission may require the posting of a bond or other financial instrument acceptable to the Commission to cover the cost of mitigation actions or providing fish passage at the artificial obstruction if the mitigation action does not achieve its goals.

(8) A person owning or operating an artificial obstruction is responsible for maintaining, monitoring, evaluating the effectiveness of, and reporting on mitigation.

(9) Mitigation:

(a) Shall be conducted in-proximity to the artificial obstruction, with respect to geographic scope;

(b) Shall have habitat type and quality which is more beneficial than that affected by the artificial obstruction, if mitigation is passage into, restoration of, or enhancement of habitat;

(c) Shall at least benefit the same native migratory fish species affected at the artificial obstruction;

(d) Shall have a clear benefit for those native migratory fish species affected at the artificial obstruction if their status is listed as "threatened" or "endangered" under the state or federal Endangered Species Act;

(e) Shall have standards for monitoring, evaluating, and adaptive management which are approved by the Department, which assure that the goal of the mitigation is achieved and maintained, and which are detailed in the waiver agreement required in OAR 635-412-0025(9);

(f) Shall be considered if the owner or operator of the artificial obstruction believes the feasibility of fish passage at the artificial obstruction is less than that for mitigation;

(g) May require quantification of baseline conditions before a decision regarding a fish passage waiver is made in situations with no existing information, which require recent information, or which have no clear benefit;

(h) Shall attempt to restore or enhance historic conditions;

(i) To the extent possible, shall be consistent with existing native migratory fish or watershed management plans;

(j) May qualify for financial incentives or grants issued by the Department and the owner's or operator's cost for mitigation or passage at the artificial obstruction shall not be a factor in the Department's net benefit determination;

(k) May require data collection and evaluation before a decision regarding a fish passage waiver is made in situations with no existing information, which require recent information, or which have no clear benefit; and

(l) Shall be consistent with the purpose and goals of the Oregon Plan.

Stat. Auth.: ORS 496.138
Stats. Implemented: ORS 509.580, 509.585 & 509.610
Hist.: DFW 2-2006, f. & cert. ef. 1-9-06

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Department of Forestry
Chapter 629

Rule Caption: Requires a preliminary certificate application fee used to administer the Underproductive Forestland Tax Credit program.
Adm. Order No.: DOF 1-2006(Temp)
Filed with Sec. of State: 1-3-2006
Certified to be Effective: 1-3-06 thru 6-29-06
Notice Publication Date:
Rules Amended: 629-023-0410, 629-023-0420, 629-023-0430, 629-023-0440, 629-023-0450, 629-023-0460, 629-023-0490
Subject: Amends the rules for the 50% Underproductive Forestland Conversion Tax Credit consistent with the 2005 Legislative Assembly HB 2122 amending the governing ORS 315.106. HB 2122 requires an application fee for filing a written request for a preliminary certificate. Fees collected will fund the Oregon Department of Forestry's administration of the reforestation tax credit program.
Rules Coordinator: Gayle Birch—(503) 945-7210

629-023-0410
Purpose of the Rules

(1) Under ORS 315.104 certain taxpayers may claim a tax credit for 50 percent of the reasonable costs of forestation of underproductive commercial forestland.

(2) Under ORS 315.106 the State Forester will establish and collect a tax credit application fee for the administration of the reforestation tax credit program.

(3) The purposes of administrative rules 629-023-0410 to 629-023-0490 are to establish fees for the administration of the program, to clarify administration of the tax credit by the State Forester and to define an applicant's appeal rights under this credit.

(4) The State Forester may periodically change the tax credit application fee so that revenue generated by the fee will be adequate to recover the costs to administer the tax credit program.

(5) The State Forester will make available a copy of the fee schedule upon request by a taxpayer.

Stat. Auth.: ORS 315 & 526
Stats. Implemented: ORS 315.104 & 315.106
Hist.: FB 5-1980, f. & ef. 3-5-80; FB 8-1982, f. & ef. 9-10-82; FB 2-1986, f. & ef. 1-10-86; FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96; DOF 4-2002 f. & cert. ef. 6-18-02; DOF 1-2006(Temp), f. & cert. ef. 1-3-06 thru 6-29-06

629-023-0420
Definitions

(1) "Appropriate sites" means those sites capable of producing a commercial hardwood or softwood stand which meet the definition of commercial forestland and are planted with suitable forest tree species.

(2) "Commercial forestland" means land for which a primary use is the growing and harvesting of forest tree species.

(3) "Forest tree species" means those species that are ecologically suited to the planting site, capable of producing commercial forest products, and marketable in the future as determined by the State Forester.

(4) "Hardwood harvests conducted for the purpose of converting underproductive forestland" means the harvest of an area occupied by a low volume and low value stand in which significant commercial harvest of forest tree species is not possible as defined in OAR 629-023-0440(2), or the landowner can demonstrate that the stand is or was unmerchantable by showing a negative economic return.

(5) "Negative economic return" means the costs that result from the harvest, such as logging, taxation and reforestation costs, exceed the market value received or to be received.

(6) "Project Costs" mean costs paid by the taxpayer to afforest underproductive forestland. The tax credit application fee is not a project cost.

(7) "Reasonable costs" mean:

(a) Costs that a prudent person in the field of forestry would be willing to pay for a product or service; and

(A) Are competitive; and

(B) Associated with generally accepted practices listed in OAR 629-023-0440(3)–(9); or

(b) Costs that are otherwise approved by the State Forester.

(8) "Reasons beyond the control of the taxpayer" means:

(a) Natural disaster including fire, flood, landslides, unusual weather conditions, and other natural incidents as determined by the State Forester; or,

(b) Failure that occurs though the project was completed in accordance with the specifications of OAR 629-023-0440 as determined by the State Forester.

(9) "Reasons under the control of the taxpayer" means the reforestation project was not completed in accordance with the specifications of OAR 629-023-0440 as determined by the State Forester.

(10) "Tax credit application fee" means a nonrefundable fee which must be paid by the taxpayer at the time the written request for preliminary certificate is filed with the State Forester.

Stat. Auth: ORS 526
Stats. Implemented: ORS 315.104 & 315.106
Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96; DOF 4-2002 f. & cert. ef. 6-18-02; DOF 1-2006(Temp), f. & cert. ef. 1-3-06 thru 6-29-06

629-023-0430
Eligible Project Costs

Forestation project and plantation establishment costs incurred by the taxpayer to forest underproductive forestland may include labor (does not include labor performed by the taxpayer), supervision, material, and equipment operating costs for the following:

(1) Site preparation;

(2) Planting, or with State Forester approval, seeding;

(3) Release;

(4) Moisture conservation;

(5) Erosion control;

(6) Animal damage control.

Stat. Auth: ORS 526
Stats. Implemented: ORS 315.104 & 315.106
Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96; DOF 4-2002 f. & cert. ef. 6-18-02; DOF 1-2006(Temp), f. & cert. ef. 1-3-06 thru 6-29-06

629-023-0440
Standards and Specifications

To qualify for a credit, the State Forester must determine that the forestland, prior harvest, and project comply with the following standards and specifications:

(1) Forestland must be capable of producing at least 20 cubic feet of wood fiber per acre at culmination of mean annual increment. Site productivity can be determined directly by tree growth and stocking measurements within the operation area, or determined indirectly using applicable USDA Natural Resources Conservation Service soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue western Oregon site class maps, or other sources.

(2) Prior to harvest the area contains no more than an allowable average of 80 square feet of basal area per acre. Measurable trees are those softwood species, 6 inches dbh and larger, and hardwood species, 11 inches and larger. Conifers may amount to no more than 50 percent of the allowable basal area.

(3) Site Preparation. The planting spot for each tree must be free from competing vegetation and slash. This may be accomplished by:

(a) Bulldozing, plowing, discing, mulching, or scalping;

(b) Hand slashing;

(c) Aerial or ground application of various chemicals;

(d) Controlled burning;

(e) Any combination of above.

(4) Planting Stock. Seedlings must be from a seed source and elevation compatible with the planting area. The seedling size, stem caliper, and root to top ratio must be suited to the project site.

(5) Planting Operations. Planting operations must be conducted as follows:

(a) Seedlings must be planted at the same depth as they were in the nursery seed bed with roots straight in the soil;

(b) The planting may be with any forest tree species as defined in OAR 629-023-0420(3), or as approved in a plan for an alternate practice with the State Forester;

(c) The planting may occur any time the trees are dormant and the ground is not frozen, snow covered, or extremely dry.

(6) Release. The taxpayer must use all measures necessary to control competing vegetation to insure survival of the seedlings.

(7) Moisture Conservation. The taxpayer must use all measures necessary to control loss of moisture and increase the chance of survival of the seedlings. This may include a combination of cultivation, mulching, or the use of chemicals.

(8) Erosion Control. When necessary the taxpayer must use water barring, contour cultivation practices, or other methods to prevent erosion.

(9) Animal Damage Control. When necessary the taxpayer must use treated planting stock, grass control, repellents, protective casings or other approved methods to control animal damage.

(10) The taxpayer has paid the tax credit application fee to the State Forester.

(11) Project costs are reasonable and must be $500 or more after deducting all financial assistance received from any federal, state or other incentive program. The tax credit application fee is not a project cost and is not included in the calculation of the tax credit.

Stat. Auth.: ORS 526
Stats. Implemented: ORS 315.104 & 315.106
Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96; DOF 1-2006(Temp), f. & cert. ef. 1-3-06 thru 6-29-06

629-023-0450
Preliminary Certificate Issuance

(1) The project is completed when the minimum number of well-distributed seedlings has been satisfactorily planted. The minimum number required under this section is the same as required under the reforestation rules of the Oregon Forest Practices Act.

(2) The preliminary credit application submitted to the State Forester by the taxpayer must include:

(a) Payment of the tax credit application fee;

(b) A project map;

(c) The tax year (the year the trees were planted) for which the credit is claimed;

(d) Whether claimant status is as an individual, partnership, or corporation;

(e) The applicant's name, address, social security number or employer identification number;

(f) The legal description of the property; county;

(g) The number of acres eligible for tax credit;

(h) The approximate date the project was completed;

(i) The amount of federal or state cost share or other incentive program funds received; and

(j) The taxpayer's reasonable eligible project costs.

(3) The tax credit claimed on the preliminary certificate may be retained by the taxpayer in the event that a new forest is not established when all of the following conditions exist:

(a) The taxpayer made a reasonable effort to meet the project specifications of OAR 629-023-0440;

(b) The project failed because of reasons beyond the control of the taxpayer;

(c) The measures performed by the taxpayer would normally have resulted in establishing the minimum number of trees per acre.

Stat. Auth.: ORS 526
Stats. Implemented: ORS 315.104 & 315.106
Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96; DOF 4-2002 f. & cert. ef. 6-18-02; DOF 1-2006(Temp), f. & cert. ef. 1-3-06 thru 6-29-06

629-023-0460
Final Certificate Issuance

The State Forester will issue a final certificate when the new forest is established.

(1) The forest is established when at least the minimum number of seedlings as required in OAR 629-023-0450 have survived two or more growing seasons and are free to grow without severe competition from other vegetation.

(2) The final credit application submitted to the State Forester by the taxpayer will include:

(a) The tax year for which the credit is claimed;

(b) The number of acres where additional treatment was needed to establish the new forest;

(c) The date the additional treatment was completed;

(d) The amount of federal or state cost share or other incentive program funds received; and

(e) The taxpayer's reasonable eligible project costs.

(3) A final certificate will not be issued when the new forest is not established due to reasons beyond the control of the taxpayer. In such a situation, the taxpayer may requalify for a tax credit in the same manner as a new applicant.

Stat. Auth.: ORS 526
Stats. Implemented: ORS 315.104 & 315.106
Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96; DOF 4-2002 f. & cert. ef. 6-18-02; DOF 1-2006(Temp), f. & cert. ef. 1-3-06 thru 6-29-06

629-023-0490
Appeal Rights

A person who wishes to appeal a decision made by the State Forester regarding this credit will use the following procedure:

(1) Person must notify the Department of Forestry field representative in writing that they disagree with the decision and explain why they disagree.

(2) If an impasse exists with the field representative, the person may write the department's Forest Tax Programs Manager in Salem, within 90 days of the field representative's determination, requesting an appeal to the Board of Forestry stating the basis for the appeal. The appeal is filed when it is received in the Forest Tax Programs Manager's office. Nothing in this rule precludes the manager from disposing of a controversy by informal conference. Appeals are made to the Board of Forestry using the Model Rules of Procedure under the Administrative Procedure Act. Under these rules the person will be provided a contested case hearing by a hearings officer, whose findings are forwarded to the Board of Forestry for review and action.

(3) If the person wishes to appeal the decision of the Board of Forestry, an appeal must be taken to the Oregon Tax Court within 60 days of the Board's action.

Stat. Auth.: ORS 526
Stats. Implemented: ORS 315.104 & 315.106
Hist.: FB 9-1990, f. & cert. ef. 10-25-90; FB 6-1996, f. 7-9-96, cert. ef. 7-15-96; DOF 1-2006(Temp), f. & cert. ef. 1-3-06 thru 6-29-06

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Rule Caption: Allows the State Forester to deny written demands for compensation under Ballot Measure 37 (2004).
Adm. Order No.: DOF 2-2006
Filed with Sec. of State: 1-11-2006
Certified to be Effective: 1-13-06
Notice Publication Date: 12-1-05
Rules Adopted: 629-001-0057
Subject: This rule replaces an expired temporary rule and provides the State Forester with the authority to deny written demands for relief under ORS 197.352 (Oregon Ballot Measure 37 (2004)). The rule specifies that if the State Forester determines a claimant is entitled to relief, the final decision on the claim, including the form of relief, will be made by the Board of Forestry.
Rules Coordinator: Gayle Birch—(503) 945-7210

629-001-0057
Delegation of Authority to State Forester — Responding to Claims under ORS 197.352

(1) This rule delegates to the State Forester certain duties and responsibilities to carry out the authorities of the Board of Forestry and the Department in responding to claims under ORS 197.352 (Formerly Chapter 1, Oregon Laws 2005, 2004 Ballot Measure 37). This rule further provides for review and modification by the Board of Forestry of certain actions taken by the State Forester pursuant to this delegation of authority.

(2) The State Forester is vested by the Board of Forestry with authority to respond to claims under ORS 197.352 by:

(a) Reviewing claims;

(b) Denying claims;

(c) Recommending approval of claims by modifying, removing, or not applying the statute(s) or rule(s) that are the basis of the claim; or

(d) Recommending payment of claims. These actions shall be done in compliance with Department of Administrative Services administrative rules relating to ORS 197.352.

(3) The State Forester shall submit to the Board any recommendation made under paragraph (2)(c) or (d) of this rule. The Board may accept or modify the State Forester's recommendation.

(4) The State Forester shall establish procedures to provide notice of any action on a claim under ORS 197.352 as required by Department of Administrative Services administrative rules relating to ORS 197.352.

(5) Actions by the Board of Forestry or State Forester on claims under this rule are actions under ORS 197.352, and are not orders under ORS 527.700.

Stat. Auth.: ORS 197.352, ORS 526 & 527
Stats. Implemented: ORS 197.352, 526.016, 526.031 & 526.041
Hist.: DOF 2-2006, f. 1-11-06 cert. ef. 1-13-06

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Department of Geology and Mineral Industries
Chapter 632

Rule Caption: Restructures the permit fees formula.
Adm. Order No.: DGMI 1-2006
Filed with Sec. of State: 1-10-2006
Certified to be Effective: 1-10-06
Notice Publication Date: 10-1-05
Rules Amended: 632-030-0022
Subject: Enrolled HB 2120 (2005) restructured the fees for permits under the Mineral Land Regulation and Reclamation Act. The proposed rule will amend OAR 632-030-0022 to make the rule consistent with these statutory amendments. The statute and proposed rule raise the application fee from $1,200 to $1,260 and change the annual fee to a formula with a base fee of $635 plus $.0075 per ton extracted.

The agency did not use an advisory committee because the statutory amendment is self-executing with respect to the proposed rule changes. Additional rule making will be initiated to implement the remaining portion of HB 2120 and an advisory committee will be appointed at that time.
Rules Coordinator: Gary W. Lynch—(541) 967-2039, ext. 23

632-030-0022
Fees

(1) Application Fee: The fee for a new application for an operating permit is $1,200. If a permit is not issued within one year, due to the applicant's failure to provide all requested information in a timely manner or the need for extraordinary department review, the applicant must pay the annual fee specified in subsection (2)(a) or resubmit the application and pay a new application fee.

(2) Annual Fee:

(a) The annual fee for an operating permit is a base fee of $635 plus $.0075 per ton of aggregate or mineral ore extracted during the previous 12-month period.

(b) Operations that have been regraded, stabilized, and acceptably seeded prior to the beginning of the annual permit period but where reclamation is not complete because the vegetation is not satisfactorily established may pay a fee of $200 in place of the annual fee specified in subsections (2)(a) or (b) above.

(c) The department in its discretion may prorate annual fees at the permittee's request to adjust the anniversary date.

(d) Each application for an Operating Permit or Limited Exemption Certificate shall be accompanied by the established fee.

(e) Each permit and certificate shall be renewed annually, on or before the last day of the month shown on the permit as the renewal month. The annual fee shall be paid and the annual report form returned prior to renewal. As a courtesy, the Department may notify the permittee with a renewal notice at least 45 days prior to the renewal date. The permittee must pay all delinquent fees owed to this Department prior to renewal of the certificate or permit;

(3) Amendment Fee: The Department may assess an additional fee not to exceed $625 for staff time, legal fees, and other administrative costs relating to a request for significant revisions to an operating permit or reclamation plan.

(4) Refunds: The State Geologist may refund a fee if the underlying application or request is withdrawn and neither significant staff time has been spent nor expenses have been incurred by the Department.

(5) Local Land Use Decisions: If, at the request of an applicant, the department responds to requests for information required by a local government in making a land use planning decision on behalf of the applicant for a specific site, the State Geologist may require the applicant to pay the department an additional fee for staff time and related costs. The department shall notify the applicant in advance of the estimated costs and the amount of hours necessary to provide the information. The actual amount assessed shall not exceed the estimate provided by the department.

(6) Extraordinary Expenses: If an application for a new permit requires extraordinary department resources because of concerns about slope stability or proximity to waters of the state or other environmentally sensitive areas, the applicant shall pay to the department an additional fee in an amount determined by the State Geologist to be adequate to cover the additional costs for staff and other related expenses. The State Geologist shall consult with the applicant when determining the amount of the fee.

(7) Special Inspection Fees: An additional fee not to exceed $200 may be assessed for department investigations under the following situations:

(a) Where surface mining is conducted without a valid Operating Permit required under ORS 517.790;

(b) Where a surface mining operation has not been reclaimed in a timely manner;

(c) Where surface mining operations are conducted outside the area authorized in the Operating Permit.

(8) The fees assessed in subsections (3), (5), (6), and (7) shall be in addition to any fee assessed under subsections (1) and (2) of this rule.

(9) The completed annual report and renewal fee required under ORS 517.775 and OAR 632-032-0022(2)(f) for any area operating under a Limited Exemption Certificate must be received by the Department within 30 days of the anniversary date of the Certificate. Failure to file the report or pay the fee within this 30-day period will result in the immediate termination of the limited exemption under ORS 517.770(2) and the revocation of the Certification. If the limited exemption is terminated; all mining allowed under the exemption must cease immediately and the landowner or operator must:

(a) Imediately begin implementation of the closure plan required under OAR 632-0300-0017(8);

(b) Or if no closure plan has been submitted to the Department, submit a closure plan to the Department within 30 days and begin implementing the closure plan within 30 days after approval by the Department; or

(c) Within 30 days, submit an application to the Department for a new Operating Permit (for sites previously operating only under a Limited Exemption Certificate) or an amendment to the existing Operating Permit (for sites operating under both a Certificate and Operating Permit).

Stat. Auth.: ORS 517
Stats. Implemented: ORS 517.800
Hist.: GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00; DGMI 2-2003, f. & cert. ef. 8-22-03; DGMI 3-2003, f. 8-29-03, cert. ef. 9-1-03; DGMI 1-2005(Temp), f. & cert. ef. 8-3-05 thru 1-30-06; DGMI 1-2006, f. & cert. ef. 1-10-06

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Department of Human Services, Child Welfare Programs
Chapter 413

Adm. Order No.: CWP 17-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-30-06
Notice Publication Date:
Rules Amended: 413-015-0405
Subject: Amending this CPS Assessment rule adds the expectation that child protective services (CPS) workers provide a pamphlet to families at the beginning of each assessment. This pamphlet will describe the assessment and court process and the rights of parents during that process. The rule is also being amended to include the expectation that a CPS worker notify the DA's office (MDT chair) within 3 business days whenever, during a sex abuse assessment/investigation, a parent or guardian who is identified as an alleged perpetrator is asked and agrees to leave the home voluntarily.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0405
CPS Assessment

The following actions are usually taken to assess a child's safety, to establish a child safety plan, and to complete the CPS assessment. The steps

do not occur in a prescribed order but are controlled by the specific circumstances in a given case. The steps are described in a logical order in these rules, but they are not necessarily in the order they must be completed.

(1) Consult with CPS supervisor. Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at key points during the assessment, such as:

(a) Before making initial contact with the family;

(b) Prior to a decision to place a child in protective custody;

(c) When a referral indicates potential danger to the worker;

(d) When a referral involves allegations that child abuse occurred in a licensed child caring agency;

(e) When a referral involves a foster care home certified by the Department;

(f) When making dispositions in complicated or sensitive situations or cases;

(g) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of the Department of Human Services (DHS) or Oregon Youth Authority (OYA).

(h) Prior to initiating court action; and

(i) Prior to a decision to close a case during or at the end of the CPS assessment.

(2) Review relevant records. The CPS worker must review relevant paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the assessment. The CPS worker must review the documents to identify information related to:

(a) Safety threats and risk influences;

(b) Worker safety;

(c) Child and family support systems and protective capacity; and

(d) History of or a pattern of abuse.

(3) Contact the reporter. The CPS worker must contact the reporter or other collateral sources for additional information if the referral does not contain adequate information to proceed with the assessment.

(4) Contact and work with other entities. The CPS worker must contact other entities including LEAs, public and private schools, tribes, and multi-disciplinary teams (MDTs) as necessary to complete the CPS assessment. The requirements for making these contacts are further described in "Working with Other Entities," OAR 413-015-0600 though 0615.

(5) Determine ICWA Status. The CPS worker must initiate the process to determine the child's ICWA status and notify the tribe if applicable:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Oregon Tribes must be notified within 24 hours after information alleging abuse is received by the Department. Consult with the ICWA manager to determine whether there is reasonable cause to believe that the child is ICWA eligible.

(c) If the Indian child is enrolled or eligible for enrollment in an Oregon tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local department ICWA liaison or a supervisor if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(6) Identify legal parents and putative fathers. The CPS worker or designee must make a reasonable effort to identify legal parents and putative fathers within 30 days after a child is taken into protective custody. Information about putative fathers must be recorded on form CF 418, "Father(s) Questionnaire" and filed in the case record.

(7) Notify Parent or Caregiver of CPS Process. The CPS worker must provide the parent or caregiver with the "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(8) Notify Parent or Caregiver of intent to interview. The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety or a criminal investigation.

(9) Conduct Interview. The CPS worker must interview people, as necessary, to complete the CPS assessment. The requirements for interviewing parents and children are described in OAR 413-015-0700 to 0740.

(10) Inquire about and determine employment. The CPS worker must make inquiries about the employment status of the alleged perpetrator. If the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of DHS or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of the DHS or OYA, the CPS supervisor must notify the DHS, Office of Human Resources, at the time of the assessment and at the time the assessment is reviewed as required in section (18) of this rule. The CPS supervisor must document the notifications in FACIS.

(11) Conduct safety assessment. The CPS worker must conduct the safety assessment using the GAP within the times lines set out in OAR 413-015-0500 through 0514. The safety assessment time lines are based on the department response determined by the screener during the screening process, described in OAR 413-015-0210(1)(a) through (c).

(12) Develop safety plan. When a safety threat has been identified as a result of the safety assessment, the CPS worker must immediately develop a safety plan with the involvement of the family and tribe, if applicable and practicable. OAR 413-015-0500 through 0514 provide specific time lines and requirements for a safety plan.

(13) Photograph and document. The CPS worker must take photographs, as necessary, to complete the CPS assessment. The requirements for taking photographs are described in OAR 413-015-0800, "Photographs and Documents of Abuse."

(14) Obtain medical examinations. The CPS worker must obtain medical examinations, as necessary, to complete the CPS assessment. The requirements for obtaining medical examinations are described in "Medical Examination and Medical History," OAR 413-015-0900 though 0905.

(15) Provide notice to the District Attorney responsible for the county MDT. When assessing an allegation of sexual abuse, if a CPS worker develops a safety plan that includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home, the CPS worker must notify the district attorney responsible for the MDT in the county where the child resides by:

(a) Providing this notice in writing; and

(b) Providing this notice within three business days of the date the parent or caregiver leaves the family home.

(16) Provide notice of child placed in protective custody. If a child is placed in protective custody (*see* OAR 413-015-0410), the CPS worker must notify parents, including a non-custodial parent; caregivers; and the child's tribe, if applicable, in writing.

(17) Record assessment activities. The CPS worker must record assessment activities and information gathered during the assessment process. OAR 413-015-0500 through 0514 provide specific requirements and procedures for making findings and documenting information such as safety threats that have been identified, the capacity of parents or caregivers to protect the child, the safety plan components, identity of relatives who are willing to contribute to the safety plan, and cultural considerations.

(18) Notify reporting party. The CPS worker must make a concerted effort to contact the person who made the report of suspected child abuse when the Department has made contact with the family and has concluded the CPS assessment.

(19) Determine disposition of CPS assessment. The CPS worker must determine a disposition to complete the CPS assessment. The requirements for determining dispositions are described in OAR 413-015-1000, "The CPS Assessment Dispositions."

(20) Obtain supervisory review. A CPS supervisor or designee must review and approve a completed CPS assessment within five working days of the electronic submission of the assessment by the CPS worker. After the assessment is reviewed by a CPS supervisor, if the alleged perpetrator is an employee of DHS or OYA, the CPS Supervisor must inform the DHS, Office of Human Resources, of the disposition. If the disposition is founded, the CPS supervisor also informs the DHS, Office of Human Resources of the type of abuse. The CPS supervisor must document the notification in FACIS.

(21) Enter FACIS data. Each local department office may designate an individual to enter the CPS supervisor's electronic verification of review and approval into FACIS.

(22) Notify parents or caregivers of CPS assessment dispositions. The CPS worker must notify the child's parents, including a non-custodial legal parent, and caregivers of all CPS assessment dispositions (unfounded, unable to determine, or founded). If providing the notice would increase the risk of harm to a child or adult victim, an exception to notification may be made with CPS supervisor approval based on documentation of risk.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06; CWP 17-2005(Temp) f. 12-30--05 cert. ef. 1-1-06 thru 6-30-06

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Adm. Order No.: CWP 18-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-30-06
Notice Publication Date:
Rules Adopted: 413-015-0302

Rules Amended: 413-015-0300, 413-015-0305, 413-015-0310
Subject: Changing and creating these Cross Reporting rule eliminates the requirement that Child Welfare and the law enforcement agency cross report "immediately" to one another. Identifies which child abuse reports require cross reporting within 24 hours and which reports will be cross reported within 10 days.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0300
Cross Reporting Defined

The Department and law enforcement agencies are required by ORS 419B.015 to notify each other when a report of child abuse, as defined in ORS 419B.005, is received. This process is known as cross reporting, and the notification is called a cross report. The following rule explains when and how a report of child abuse received by the Department or a law enforcement agency is cross reported. Information is not cross reported until it is received.

Stat. Auth.: ORS 418.005 & 419B.015
Stats. Implemented: ORS 418.005 & 419B.015
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 18-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06

413-015-0302
Purpose of Cross Reporting

The purpose of the cross report is to share reports of alleged child abuse between the Department and law enforcement agencies.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 18-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06

413-015-0305
Cross Reporting Requirements

(1) Who is Required to Cross Report and to Whom.

(a) When a report of child abuse is received by a Department screener, the screener or designee must cross report to a law enforcement agency in the county where the report was made. If the abuse is alleged to have occurred in a different county, the screener must cross report a second time to the law enforcement agency in the county where the alleged abuse occurred.

(b) When a report of child abuse is received by a law enforcement agency, the law enforcement agency must cross report to the local office of the Department in the county where the report was made.

(2) What to include in a Cross Report. A cross report from either the Department or law enforcement agencies must include:

(a) The information provided by the person making the child abuse report. This may include, the name of and contact information for the confidential reporter, the names and addresses of the child, the names and addresses of the child's parent or caregiver, the child's age, the nature and extent of the abuse, any evidence of previous abuse, the explanation given for the abuse, where the abuse occurred, identity and whereabouts of the alleged abuser and any other information provided by the person making the report that would be helpful in establishing the cause of the abuse and the identity and whereabouts of the alleged abuser; and

(b) The name and contact information for the assigned CPS worker and officer, if known.

(3) When and How to Cross Report.

(a) The Department. When and how the Department must cross report to a law enforcement agency is described below.

(A) The same day.

(i) The Department must cross report to a law enforcement agency on the same day the screener determines that a report of alleged child abuse requires an immediate response by the Department and/or immediate notification to law enforcement. This includes, but is not limited to any reports of:

(I) Moderate to severe physical abuse;

(II) Visible injuries to a child;

(III) Sexual abuse; or

(IV) Suspicious or unexpected death of a child.

(ii) The reports of child abuse that the Department cross reports on the same day must be cross reported in one of the following ways:

(I) Verbal Cross report. When a cross report is verbal and the Department and law enforcement do not respond to the report of child abuse together, a completed screening report must be sent to the law enforcement agency;

(II) Electronic Transmission; or

(III) Hand Delivery.

(B) No later than ten days.

(i) All other reports of child abuse, including reports assigned for CPS assessment and closed at screening, must be cross reported within a time frame that ensures the receipt of the cross report by law enforcement no later than ten days after receiving the report.

(ii) The reports of child abuse that the Department cross reports within a time frame that ensures the receipt of the cross report no later than ten days must be cross reported in one of the following ways:

(I) Electronic transmission;

(II) Hand delivery; or

(III) Mail.

(C) Department cover sheet. In order for law enforcement agencies to quickly and easily prioritize reports and respond accordingly, all written cross reports from the Department must have a cover sheet. The following information must be included on the cover sheet:

(i) Date and time of the cross report;

(ii) How the cross report is made;

(iii) If additional cross reports occurred, and if so, to what agencies;

(iv) Name and number of the screener or designee making the cross report;

(v) If the report was assigned or not assigned;

(vi) Name and number of the assigned caseworker;

(vii) Cross reporting time frame;

(viii) If the report is an original or follow-up cross report; and

(ix) Date of the original cross report, if it is a follow up cross report.

(D) Supplemental cross reporting by the Department. The Department may receive information not previously cross reported but apparently related to a report of child abuse involving the same victim and the same alleged perpetrator that has been previously cross reported. If the information relates to the same incident of abuse, the screener must make a supplemental cross report of the additional information to each law enforcement agency that received the prior cross report. Supplemental information that is determined to be critical, given the information in the original report, must be cross reported immediately. All other supplemental information must be cross reported within a time frame that ensures the receipt of the information no later than ten days after the information was received.

(b) Law Enforcement. When and how law enforcement agencies must cross report to the Department is described below.

(A) Immediate.

(i) Law enforcement agencies must cross report to the Department immediately when a law enforcement agency determines that a report of alleged child abuse requires a joint immediate response.

(ii) The reports of child abuse that law enforcement agencies cross report immediately must be cross reported by verbal cross report to the local office of the Department without delay.

(B) Next Business Day.

(i) Law enforcement agencies must cross report to the Department all other reports of child abuse no later than the end of the next business day after receiving the report.

(ii) The reports of child abuse that law enforcement agencies cross report no later than the end of the next business day must be cross reported in one of the following ways:

(I) Verbal report;

(II) Electronic transmission; or

(III) Hand delivery.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 18-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06

413-015-0310
Department Documentation and Verification Requirements

Documentation and Verification

(1) If the Department cross reports a report of child abuse on the same day the report is received, the Department screener or designee must document in FACIS:

(a) The date the cross report is made from Child Welfare to law enforcement;

(b) To which law enforcement agency the cross report is made; and

(c) How the cross report is made.

(2) Copies of the cover sheet must be maintained in the case record.

(3) If the cross report is faxed, the screener or designee must attach the fax transmittal confirmation sheet to each cover sheet.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 18-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06

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Adm. Order No.: CWP 19-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-30-06
Notice Publication Date:

Rules Amended: 413-015-0115, 413-015-1000
Subject: OAR 413-015-0115 is being amended to provide a definition of "personal representative" according to Senate Bill 198 from the 2005 legislative session. This definition is necessary to understand the right of a victim to the presence of a personal representative during interviewing and medical examination in a child protective services investigation. This OAR is also being amended to provide a definition for "substance" according to Senate Bill 907 from the 2005 legislative session. This definition clarifies the meaning of "substance" in the additions to the Physical Neglect and threat of harm CPS dispositions. OAR 413-015-1000 is being amended to add language to the physical neglect and threat of harm dispositions providing clarification to CPS workers when making assessment dispositions related to unlawful exposure to substances.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0115
Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) "Caregiver" is a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a person under 18 years of age.

(3) "Child abuse" means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) "Child protective services (CPS)" means a specialized social service program that the Department provides on behalf of children who are abused or who are at substantial risk of child abuse by a parent or caregiver.

(5) "Child protective services assessment" means activities and interventions that evaluate potential safety threats, risk influences, and caregiver protective capacity and determine whether or not child abuse has occurred. Activities include development of a safety plan and identification of services.

(6) "Child protective services supervisor (CPS supervisor)" means an employee of the Department trained in child protective services and designated as a supervisor.

(7) "Child protective services worker (CPS worker)" means an employee of the Department who has completed the mandatory department training for child protective service workers.

(8) "Critical case junctures" are events in family development or case work practice that may increase or otherwise affect the risk to a child's safety, permanency, or well-being.

(9) "Department" means the Department of Human Services Child Welfare Program.

(10) "Department response" means how the Department intends to respond to a report of child abuse after a report of alleged abuse is screened.

(11) "FACIS" means the Family and Child Information System.

(12) "Family Decision Meeting (FDM)" means a family focused intervention facilitated by professional staff that is designed to build and strengthen family supports and the natural care-giving systems for the children. Family decision meetings may include family group conferences, family unity meetings, family mediation, or other professionally recognized interventions that include extended family and rely upon the family to make decisions about planning for its children. The purpose of the family decision meeting is to establish a plan that may include a permanency plan, concurrent permanency plan, placement recommendation, or service recommendation and agreements, which provide for the safety, attachment, and permanency needs of the child. Family decision meetings emphasize the family's unique plans for its children. The family members collaborate, rather than just participate in the meeting. It is also essential that the professionals in the meeting have direct involvement with the child and the family and are not just members of a committee.

(13) "Guided Assessment Process (GAP)" is a tool used to determine the presence of a safety threat that requires consideration of risk influences and parent or caregiver protective capacity.

(14) "Harm" means impairment, damage, detriment, or injury to a child's physical, sexual, emotional, or mental development or functioning.

(15) "ICWA" means the Indian Child Welfare Act.

(16) "Immediate safety threat" means behavior, conditions, or circumstances that are presently beyond the parent's or caregiver's current ability to manage and are likely to result in harm to a child.

(17) "Multi-disciplinary team (MDT)" is a county investigative team, described in ORS 418.747, that includes law enforcement personnel, child protective service workers, district attorneys, school officials, health department staff, and juvenile department personnel.

(18) "Personal representative" is a person who is at least 18 years of age and is selected by a child who is the victim of a person crime as defined in 2005 Or. Laws ch. 490, and who is at least 15 years of age at the time of the crime, to be present and supportive during the CPS assessment. The personal representative may not be a person who is a suspect in, party or witness to, the crime.

(19) "Protective capacity" means a parent's or caregiver's strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or stop risk influences from creating a safety threat.

(20) "Protective custody" means custody authorized by ORS 419B.150.

(21) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(22) "Report" means information provided to the Department that constitutes an allegation of child abuse.

(23) "Risk influences" means those circumstances and situations that contribute to the severity of identified safety threats and that are considered by the CPS worker when a safety plan is developed.

(24) "Safe" means there is an absence of safety threats or there is sufficient protective capacity to manage the existing safety threats.

(25) "Safety assessment" means actions or interventions, which include face-to-face contact with the child and parent, or caregiver, to determine whether a child is safe.

(26) "Safety plan" means a documented set of actions or interventions that describe how a child's safety is achieved by eliminating or managing a safety threat.

(27) "Safety threat" means behavior, conditions, or circumstances that are likely to result in harm to a child.

(28) "Screener" means a department employee with training required to provide screening services.

(29) "Screening" means the process used by a screener to determine the Department's response when information alleging abuse is received.

(30) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over the counter medications or alcoholic beverages.

(31) "Substantial harm" means immobilizing impairment, life threatening damage, or significant or acute injury to a child's physical, sexual, psychological, or mental development or functioning.

(32) "Team Decision Meeting (TDM)" means a facilitated meeting with family, extended family, community members, service providers, and child welfare staff held for the purpose of making child placement-related decisions.

(33) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06

413-015-1000
The CPS Assessment Dispositions

(1) This rule describes child abuse for the purpose of making CPS assessment dispositions.

(2) Following the completion of the CPS assessment, the CPS worker must determine whether there is reasonable cause to believe child abuse occurred. The possible determinations are:

(a) "Founded," which means there is reasonable cause to believe that child abuse occurred.

(b) "Unfounded," which means no evidence of child abuse was identified or disclosed.

(c) "Unable to determine," which means there are some indications of child abuse, but there is insufficient data to conclude that there is reasonable cause to believe that child abuse occurred.

(3) When determining whether there is reasonable cause to believe child abuse occurred, the CPS worker shall consider, among others, the following parental behavior, conduct, and conditions:

(a) Abandonment, including parental behavior showing an intent to permanently give up all rights and claims to the child.

(b) Child selling, including the selling of a child that consists of buying, selling, bartering, trading or offering to buy or sell the legal or physical custody of a child.

(c) Mental injury (psychological maltreatment), including cruel or unconscionable acts or statements made, threatened to be made, or permitted to be made by the parent or caregiver that has a direct effect on the

child. The parent or caregiver's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional or social well-being and functioning.

(d) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Chronic neglect is a persistent pattern of family functioning in which the parent or caregiver does not sustain or meet the basic needs of a child resulting in an accumulation of harm that can have long term effect on the child's overall physical, mental, or emotional development. Neglect includes the following:

(A) Physical neglect, which includes:

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(iii) Unlawful exposure of a child to a substance that subjects a child to substantial harm to the child's health or safety. When the CPS worker is making a determination of physical neglect based on substantial harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from disabled infants with life threatening conditions. However, failure to provide the child with immunizations or routine well child care alone does not constitute medical neglect. When the CPS worker is making a determination of medical neglect, the CPS worker must consult with a health care professional.

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the parent or caregiver leaving the child with another person and failing to reclaim the child, or parental or caregiver failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The parent or caregiver behavior must be related to the observable and substantial harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(e) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include:

(A) Head injuries;

(B) Bruises, cuts, lacerations;

(C) Internal injuries;

(D) Burns or scalds;

(E) Injuries to bone, muscle, cartilage, and ligaments;

(F) Poisoning;

(G) Electrical shock;

(H) Death.

(f) Sexual abuse, which includes a person's use or attempted use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(g) Sexual exploitation, including the use of a child in a sexually explicit way for personal gain, for example, to make money, in exchange for food stamps or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(h) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of substantial harm of physical abuse, sexual abuse, neglect, mental injury, or other maltreatment. This also includes a threat of harm to a child's health or safety as a result of unlawful exposure of a child to a substance. When the CPS worker is making a determination of threat of harm to a child's health due to unlawful exposure to a substance, the CPS worker must consult with a medical professional.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 6-2005, f. & cert. ef. 4-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06

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Adm. Order No.: CWP 20-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-30-06
Notice Publication Date:
Rules Amended: 413-015-0720, 413-015-0900
Subject: These amendments will provide direction in the Interviewing Rule and in the Medical Examination Rule for consideration of the request by victim of a physical or sex abuse who is at least 15 years of age to have a "personal representative" present during these activities if the presence will not compromise the child protective services (CPS) assessment.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0720
Interviewing Alleged Victims and Siblings

The CPS worker must interview and observe the alleged victims and their siblings in accordance with the following guidelines:

(1) If one child within the family appears to be a victim of child abuse, the CPS worker must interview and observe siblings and other children living in the household. The CPS worker must consider interviewing other children with whom the alleged abuser had recent access.

(2) The CPS worker must notify the parents or caregivers the same day a child has been interviewed. The CPS supervisor or designee must approve an extension of this time frame.

(3) The CPS worker must conduct interviews in a manner that assures privacy for the child.

(4) If the parent or caregiver is the alleged abuser or if the presence of the parent or caregiver might impede the interview, the CPS worker may interview children independent of their parents or caregivers.

(5) A CPS worker must allow a child who is the victim of a person crime as defined in 2005 Or. Laws ch. 490, and who is at least 15 years of age at the time of the abuse, to have a personal representative to be present during an interview. If a CPS worker believes that the personal representative would compromise the CPS assessment, the CPS worker may prohibit a personal representative from being present during the interview.

(6) The CPS worker must observe the child's injuries or signs of neglect. The CPS worker may need to remove a child's clothing to make adequate observations. In that event, the CPS worker must:

(a) Use discretion and make the child as comfortable as possible.

(b) Seek parental consent and assistance, when possible and appropriate.

(c) Consider requesting a worker or other support person, who is the same gender as the child, be present to serve as a witness and provide comfort for the child.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 20-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06

413-015-0900
Obtaining Medical Examination

The CPS worker should secure a medical examination of the child and obtain the child's medical history when necessary to determine treatment needs, to reassure the child and family, or to assist in completing the CPS assessment:

(1) If there is evidence of trauma to the child, the CPS worker must make arrangements to transport the child to a medical facility. The CPS worker should discuss with the parent or caregiver the need for medical evaluation of treatment. The CPS worker may ask parents to take the child to a medical facility for a medical evaluation or treatment. The CPS worker may accompany the parent to a medical facility and must request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Health Information."

(2) If the parent refuses to secure necessary medical examination or treatment, and the CPS worker has reasonable cause to believe that an exam will reveal evidence of abuse, the worker must contact the LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical exam.

(3) A child 12 years of age or older may refuse a physical examination if the sole purpose of the exam is to preserve evidence of sexual abuse.

(4) A child who is the victim of a person crime as defined in 2005 Or. Laws ch. 490, and who is at least 15 years of age at the time of the abuse, may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(5) When the CPS worker is making a determination of medical neglect, the CPS worker must consult with a health care professional.

(6) If there is an indication of a life-threatening condition, or of a deteriorating condition that may become life threatening, the CPS worker must seek medical consultation immediately.

(7) If there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab, the CPS worker must make arrangements to have the child tested for chemical exposure within 24 hours of learning of the exposure.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 20-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06

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Adm. Order No.: CWP 21-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Repealed: 413-050-0100, 413-050-0110, 413-050-0120, 413-050-0130, 413-050-0140
Subject: These Family Resource Worker Services rules are being removed due to the discontinuance of funding as recommended by the Department and approved by the 2005 Legislature.
Rules Coordinator: Annette Tesch—(503) 945-6067

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Adm. Order No.: CWP 22-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 10-1-05
Rules Repealed: 413-080-0100, 413-080-0110, 413-080-0120, 413-080-0130, 413-080-0140, 413-080-0150
Subject: These Family Foster Care rules allow for the placement of children in relative homes which are not certified. This is in conflict with other administrative rule, policy and practice. Children in state custody need to be placed in certified homes.
Rules Coordinator: Annette Tesch—(503) 945-6067

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Adm. Order No.: CWP 23-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-30-06
Notice Publication Date:
Rules Amended: 413-130-0010, 413-130-0080
Subject: Rules 413-130-0010 and 413-130-0080 in the Adoption Assistance rules are being amended to reduce the maximum payment by the Department to adoptive families for non-recurring expenses directly related to the adoption process from $2,000 per child to $1,500 per child. Non-recurring adoption expenses are court costs, attorney fees, home study fees, pre-placement visit costs and other expenses that are directly related to the legal adoption of a special needs child.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-130-0010
Definitions

(1) "Adoption assistance" means financial and/or medical assistance to adoptive families to assist them with the costs associated with their adoptive child's needs. Financial benefits are funded by DHS's adoption assistance budget. Assistance can be in the form of cash and/or medical coverage, an agreement only or special payments.

(2) "Adoption assistance benefits" means all or any portion of the adoption assistance package of benefits which include monthly payments, nonrecurring payment, special payments and medical assistance.

(3) "Adoption Assistance Review Committee" is a committee composed of DHS field and central office staff who have expertise in the area of adoption. It meets monthly, or as necessary, to provide recommendations regarding the type of benefits in situations where a review has been requested as part of the negotiations process.

(4) "Agreement only" is an agreement between DHS and the parents signed prior to the finalization of the adoption, to provide adoption assistance when/if a need for payment and/or medical coverage arises prior to the child's 18th birthday.

(5) "Medical assistance" means payment for medical services in accordance with the administrative rules of DHR.

(6) "Monthly Payments" means adoption assistance payments paid monthly by DHS to the family on behalf of the child which are determined by negotiation between the adoptive family and the agency worker, considering relevant factors which include but are not limited to the needs of the child, the services required to meet those needs, cost of such services, the family's ability to pay for the services, and the community resources available.

(7) "Nonrecurring payment" means a one-time payment up to $1,500, which DHS may pay to an adoptive family to assist with the expenses incurred in legally finalizing the adoption of a special needs child. Nonrecurring expenses may include the reasonable and necessary adoption fees, court costs, attorney fees, mediation costs, and other expenses which are directly related to the legal adoption of a special needs child.

(8) "Payment" means cash assistance to adoptive families to meet the child's needs.

(9) "Qualified Vendor Attorney" is an attorney who agrees to accept DHS's rate of reimbursement as payment in full for finalizing the adoption of a child who is eligible for adoption assistance.

(10) "Special payments" means payment for unanticipated, short-term costs which are directly related to the child's special needs or are essential to the welfare of the child, and are not covered by the adoptive family's insurance or by Medicaid as negotiated between DHS and the family

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.330-418.340
Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06

413-130-0080
Nonrecurring Payment for Adoption Expenses

(1) DHS may make a one-time payment of up to $1,500, nonrecurring payment to an adoptive family to assist with the costs incurred in legally finalizing the adoption of a special needs child. Nonrecurring expenses are the reasonable and necessary adoption fees, court costs, attorney fees, mediation costs, and other expenses which are directly related to the legal adoption of a special needs child. Other expenses are defined as the costs of adoption incurred by, or on behalf of, the parents and for which the parents carry the burden of payment, such as the adoption study, health and psychological examinations, supervision of the placement prior to adoption, transportation, and the reasonable costs of lodging and food for the child and/or the adoptive parents during travel when necessary to complete the adoption process. This payment may not duplicate expenses covered by Interstate Compact for Placement of Children expenses covered by DHS contract with a private agency, or expenses already covered by some other resource available to the adoptive family.

(2) Documentation of the nonrecurring adoption expenses will be required and must be submitted prior to execution of the adoption assistance agreement. The agreement, indicating the nature and amount of the nonrecurring expenses, must be signed prior to the final decree of adoption.

(3) The legal fees, when reimbursement is requested, are included in the nonrecurring expenses. It is the responsibility of the adoptive family to choose a privately retained attorney or enter into an agreement with an DHS "vendor" attorney. Vendor attorneys are those who have an agreement with DHS to process DHS adoptions for the currently established vendor fee plus costs for filing and birth certificates. DHS will make payment directly to the vendor attorneys after adoption is legalized. For other attorneys, the adoptive family is responsible for payment and DHS will reimburse the family for reasonable charges. Reasonable charges will be considered equal to the current vendor rate, and only in extraordinary circumstances may a higher amount be considered.

(4) Nonrecurring payments will be made when the agency receives the final order of adoption.

Stat. Auth.: ORS 418.005, 418.340
Stats. Implemented: ORS 418.330-418.340
Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: CWP 24-2005(Temp)
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Notice Publication Date:
Rules Amended: 413-140-0010, 413-140-0030
Subject: These Independent Adoption rules are being changed as follows: OAR 413-140-0010 is being amended to add a definition of the term "incapacitated" and OAR 413-140-0030 is being amended to add the new statutory requirements that specify on whom a petitioner must serve a copy of a petition for the adoption of a minor child.
Rules Coordinator: Annette Tesch—(503) 945-6067

413-140-0010
Definitions

(1) "Certificate of Approval" means a document indicating that an independent adoption home study for an out-of-state adoption was completed or approved by a contracted adoption agency and by Department of Human Services Office of Permanency for Children (DHS OPC), which approves of the persons as potential adoptive parents, and verifies that potential adoptive applicants meet minimum standards for adoption homes per OAR 413-120-0300 and 413-120-0310.

(2) "Contracted Adoption Agency" means a licensed Oregon adoption agency holding a current contract with (DHS OPC) to complete independent adoption home studies and placement reports.

(3) "Fee" means the maximum fixed amount that may be charged for conducting and providing a home study or placement report for a proposed independent adoption.

(4) "Home Study" means a written evaluation of the prospective adoptive parent(s)' suitability to adopt and parent a child who may be placed for adoption. The home study is completed prior to the filing of a petition to adopt, in accordance with DHS reporting format and standards, and states whether or not the prospective adoptive parents meet the minimum standards for adoptive homes as set forth in DHS administrative rules, OAR 413-120-0300 through 413-120-0310.

(5) "Independent Adoption" means any adoption in which the consent is given other than by DHS or a licensed adoption agency.

(6) "Incapacitated" means (as defined at ORS 109.309(7)(c)) a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person lacks the capacity to meet the essential requirements for the person's physical health or safety. As used in this section, "Meet the essential requirements for the person's physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(7) "Licensed Adoption Agency" means a licensed Oregon adoption agency.

(8) "Petitioner" means the person or persons seeking to adopt the child of another person.

(9) "Placement Report" means a comprehensive written report and recommendation to the court prepared after the filing of a petition and after the child is placed for the purpose of adoption. The report is completed in accordance with the division's prescribed reporting format and includes information about the child's background and placement; medical and genetic history; birth parent(s)' history; status and adjustment of the child in the adoptive home; and status and adjustment of the child's prospective adoptive parent(s).

(10) "Stepparent" means a person married to and not legally separated from the petitioning biological or adoptive parent of the child.

(11) "Venue" means the particular county in which a court that possesses subject matter jurisdiction under ORS 109.741 may decide whether or not to grant a decree of adoption.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.741
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-2000, f. & cert. ef. 1-14-00; SOSCF 50-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 24-2005(Temp), f. 12-30-05, cert. ef. 1-1-06

413-140-0030
Contents and Service of Petition

(1) Every petition for the adoption of a child shall be governed by the Uniform Child Custody Jurisdiction and Enforcement Act, ORS 109.701 to 109.834 and venue shall lie in the county with which the child has the most significant connection, or the county in which the contracted adoption agency is located. A declaration of the child's connection with Oregon in accordance with ORS 109.741, the information required under ORS 109.767, and a declaration, for the purpose of determining venue, of the child's connection with the county in which the petition is filed or that the county in which the petition is filed is the county in which the licensed adoption agency is located shall be included in the petition.

(2) The petitioner for the adoption of a minor child shall cause copies of the documents required to be filed with the court to be served upon the Assistant Director of DHS Children, Adults and Families (CAF), by either registered or certified mail with return receipt or personal service, within 30 days after the documents have been filed with the court. Date of service shall be the date the Assistant Director is in receipt of a copy of the petition and all documents and fees described in this rule.

(3) The documents served upon the Assistant Director of DHS CAF shall include:

(a) A statement containing:

(A) The full names, permanent addresses, and telephone numbers of the petitioner and child;

(B) The full names and permanent addresses of:

(i) All persons whose consent to the adoption is required under ORS 109.312, when these names and addresses are known or may be readily ascertained by the petitioner;

(ii) The persons with whom the child has lived during the last five years and the places where the child has lived during that period, if the names and addresses may be readily ascertained by the petitioner;

(iii) If known to the petitioner, any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parenting time or visitation with the child; and

(iv) The Oregon licensed adoption agency, if any, or the relative or person that privately placed the child for adoption.

(b) The documents demonstrating consent under ORS 109.312 to the adoption of the child;

(c) Written evidence documenting a current home study that has been approved by either DHS OPC or by an Oregon licensed adoption agency submitted for the purpose of demonstrating that the petitioners meet the minimum standards for adoptive homes as set forth in OAR 413-120-0300 and 413-120-0310, (Minimum Standards for Adoptive Homes). This requirement shall not apply in the case of those persons who qualify for a waiver of the home study or placement report in accordance with OAR 413-140-0040.

(A) To meet the above requirement, if the petitioner is an Oregon resident, the petitioner shall submit a copy of the home study.

(B) To meet the above requirement if the petitioner is a non-Oregon resident, the petitioner shall submit a copy of the home study and a Certificate of Approval.

(d) A written disclosure statement, prepared on form CF 960, Adoption Disclosure Statement, which contains an itemized accounting of all money paid, or estimated to be paid, by the petitioner for fees, costs and expenses related to the adoption, including all legal, medical, living and travel expenses;

(e) A check or money order for those fees required and specified in OAR 413-140-0060 shall also accompany the petition;

(f) In the case of a stepparent adoption, evidence the petition was served on all persons whose consent is required under ORS 109.312, and each of the child's eligible grandparents who have established rights under ORS 109.119 or 109.121, if the names and addresses are known or may be readily determined;

(g) When a parent of the child is deceased or incapacitated, either:

(A) Evidence the petition was served on the parents of the deceased or incapacitated parent, if the names and addresses are known or may be readily ascertained by the petitioner; or

(B) Evidence that the petitioner has requested of the court a waiver of the service described in paragraph (A) of this subsection for good cause.

(h) A completed report of the medical and genetic history of the child and of the biological parent(s), pursuant to ORS 109.342, on forms prescribed by the division. The medical report shall be in English and be as thorough as possible. A medical history is not required when a child is adopted by a step parent;

(i) A stepparent or relative, or person petitioning to readopt a child previously adopted in a foreign nation who qualifies for a waiver under OAR 413-140-0020(4) or 413-140-0040, may request that DHS OPC waive the home study and/or placement report at the time of filing a petition to adopt;

(j) Verification that the birth parent(s) and petitioner(s) have been advised of the voluntary adoption registry established under ORS 109.450, and have been given information on how to access those services;

(k) A statement that one petitioner, the child or one birth parent, has resided in Oregon continuously for a period of six months prior to the date of the petition.

(l) Every adoption petition shall comply with the Indian Child Welfare Act of 1978, U.S.C., Title 25, Sections 1901-1963, if applicable. Every petition involving the Indian Child Welfare Act shall include:

(A) A statement of the efforts to notify the appropriate Indian tribe or tribes of the adoption;

(B) A statement of the efforts to comply with placement preferences of the Indian Child Welfare Act, or the placement preferences of the appropriate Indian tribe.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.309, 109.312
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1998, f. & cert. ef. 1-28-98; SOSCF 2-2000, f. & cert. ef. 1-14-00; SOSCF 32-2000, f. & cert. ef. 11-7-00; SOSCF 50-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 24-2005(Temp), f. 12-30-05, cert. ef. 1-1-06

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

Adm. Order No.: OMAP 67-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 410-120-0250, 410-120-1280
Subject: The General Rules programs administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. OMAP amended OAR 410-120-0250 to clarify that although Managed Care Plans' service limitations may vary, the benefit coverage is the same. OMAP amended OAR 410-120-1280 to reference in rule, the CMS published 2006 national code set, Healthcare Common Procedure Coding System (HCPCS).
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0250
Managed Care Organizations

(1) The Department of Human Services (DHS) provides some Oregon Health Plan (OHP) Clients with prepaid health services, through contracts with a Prepaid Health Plan (PHP), also known as a Managed Care Organization (MCO). An MCO may be a Fully Capitated Health Plan (FCHP), Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Mental Health Organization (MHO) or Physician Care Organization (PCO).

(2) The MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law, the MCO's contract with DHS and the OHP Administrative Rules governing PHPs (OAR 410 division 141).

(3) All MCOs are required to provide benefit coverage pursuant to OAR 410-120-1210 and 410-141-0480 through 410-141-0520, however, authorization criteria may vary between MCOs. It is the Providers' responsibility to comply with the MCO's Prior Authorization requirements or other policies necessary for reimbursement from the MCO, before providing services to any OHP Client enrolled in a MCO.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 67-2005, f. 12-21-05, cert. ef. 1-1-06

410-120-1280
Billing

(1) A Provider enrolled with the Office of Medical Assistance Programs (OMAP) must bill using the OMAP assigned provider number, in addition to the National Provider Identification (NPI) number, if the NPI is available.

(2) For Medicaid covered services the Provider must not bill the OMAP more than the Provider's Usual Charge (see definitions) or the reimbursement specified in the applicable Provider rules:

(a) A Provider enrolled with OMAP or providing services to a Client in a managed care plan under the Oregon Health Plan (OHP) must not seek payment for any services covered by Medicaid fee-for-service or through contracted managed care plans, except any coinsurance, co-payments, and deductibles expressly authorized by the General Rules, OHP Rules or individual Provider rules:

(A) An OMAP Client for covered benefits; or

(B) A financially responsible relative or representative of that individual.

(b) Exceptions under which an enrolled Provider may seek payment from an eligible Client or Client representative are described below:

(A) The Provider may seek any applicable coinsurance, copayments and deductibles expressly authorized by OMAP rules in OAR 410 Division 120, OAR 410 Division 141, or any other individual Provider rules;

(B) The Client did not inform the Provider of OHP eligibility, of OHP managed health plan enrollment, or of other third party insurance coverage, either at the time the service was provided or subsequent to the provision of the service or item, and as a result the Provider could not bill OMAP, the managed health care plan, or third party payer for any reason, including timeliness of claims, lack of Prior Authorization, etc. The Provider must document attempts to obtain information on eligibility or enrollment;

(C) The Client became eligible for OMAP benefits retroactively but did not meet other established criteria described in these General Rules and the appropriate Provider rules (i.e., retroactive authorization);

(D) A Third Party Resource made payments directly to the Client for services provided;

(E) The Client did not have full OMAP benefits. Clients receiving a limited Medicaid coverage, such as the Citizen Alien Waived Emergency Medical Program, may be billed for services that are not benefits of those programs. The Provider must document pursuant to section (3) of this rule that the Client was informed that the service or item would not be covered by OMAP;

(F) The Client has requested continuation of benefits during the Administrative Hearing process and final decision was not in favor of the Client. The Client will be responsible for any charges since the effective date of the initial notice of denial;

(G) A Client cannot be billed for services or treatment that has been denied due to Provider error (e.g., required documentation not submitted, Prior Authorization not obtained, etc.);

(H) The charge is for a copayment when a Client is required to make a copayment as outlined in OMAP General Rules (410-120-1230) and individual Provider rules;

(I) In exceptional circumstances, a Client may request continuation of a covered service while asserting the right to privately pay for that service. Under this exceptional circumstance, a Client can be billed for a covered service if the Client is informed in advance of receiving the specific service of all of the following:

(i) That the requested service is a covered service and that the Provider would be paid in full for the covered service if the claim is submitted to OMAP or the Client's managed care plan, if the Client is a member of a managed care plan; and

(ii) The estimated cost of the covered service, including all related charges, the amount that OMAP or the Client's managed care plan would pay for the service, and that the Client cannot be billed for an amount greater than the maximum OMAP reimbursable rate or managed care plan rate, if the Client is a member of a managed care plan; and

(iii) That the Provider cannot require the Client to enter into a voluntary payment agreement for any amount for the covered service; and

(iv) That, if the Client knowingly and voluntarily agrees to pay for the covered service, the Provider must not submit a claim for payment to OMAP or the Client's managed care plan; and

(v) The Provider must be able to document in writing, signed by the Client or the Client's representative, that the Client was provided the information described above; that the Client was provided an opportunity to ask questions, obtain additional information and consult with the Client's caseworker or Client representative; and the Client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The Client must be given a copy of the signed agreement. A Provider must not submit a claim for payment for covered services to OMAP or to the Client's managed care plan that is subject to such agreement.

(3) Non-Covered Medicaid Services:

(a) A Provider may bill a Client for services that are not covered by OMAP or the managed care plan. However, the Client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the Client or Client's representative is financially responsible for payment for the specific service. Providers must be able to document in writing signed by the Client or Client's representative, that the Client was provided this information and the Client knowingly and voluntarily agreed to be responsible for payment;

(b) Services which are considered non-covered are listed in the following rules (in rule precedence order):

(A) OAR 410-141-0480, Benefit Package of Covered Services; and

(B) OAR 410-141-0520, Prioritized List of Health Services; and

(C) OAR 410-120-1200, Medical Assistance Benefits: Excluded services and limitations; and

(D) Applicable Provider rules.

(c) A Client cannot be billed for missed appointments. A missed appointment is not considered to be a distinct Medicaid service by the federal government and as such is not billable to the Client or OMAP.

(4) All claims must be billed on the appropriate form as described in the individual Provider rules or submitted electronically in a manner authorized by the Department of Human Services (DHS) Electronic Data Interchange (EDI) rules, OAR 410-001-0100 et. seq.

(5) Upon submission of a claim to OMAP for payment, the Provider agrees that it has complied with all OMAP Provider rules. Submission of a claim, however, does not relieve the Provider from the requirement of a signed Provider agreement.

(6) All billings must be for services provided within the Provider's licensure or certification.

(7) It is the responsibility of the Provider to submit true and accurate information when billing OMAP. Use of a Billing Provider does not abro-

gate the Performing Provider's responsibility for the truth and accuracy of submitted information.

(8) A claim must not be submitted prior to delivery of service. A claim must not be submitted prior to dispensing, shipment or mailing of the item unless specified otherwise in OMAP's individual Provider rules.

(9) A claim is considered a Valid Claim only if all required data is entered on or attached to the claim form. See the appropriate Provider rules and supplemental information for specific instructions and requirements. Also, see Valid Claim in the Definitions section of these rules.

(10) The HIPAA Codes rules, 45 CFR 162, apply to all Medicaid Code Set requirements, including the use of diagnostic or procedure codes for Prior Authorization, claims submissions and payments. Code Set has the meaning established in 45 CFR 162.100, and it includes the codes and the descriptors of the codes. These federal Code Set requirements are mandatory and OMAP lacks any authority to delay or alter their application or effective dates as established by the U.S. Department of Health and Human Services.

(a) OMAP will adhere to the national Code Set requirements in 45 CFR 162.1000 – 162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically;

(b) Periodically, OMAP will update its Provider rules and tables to conform to national codes. In the event of an alleged variation between an OMAP-listed code and a national code, OMAP will apply the national code in effect on the date of request or date of service and the Provider, and the OMAP-listed code may be used for the limited purpose of describing OMAP's intent in identifying the applicable national code;

(c) Only codes with limitations or requiring Prior Authorization are noted in rules. National Code Set issuance alone should not be construed as OMAP coverage, or a covered service.

(d) OMAP adopts by reference the National Code Set revisions, deletions, and additions issued and published by the American Medical Association (Current Procedural Terminology — CPT) and on the CMS website (Healthcare Common Procedural Coding System — HCPCS) to be effective January 1, 2006. This code adoption should not be construed as OMAP coverage, or a covered service.

(11) Diagnosis Code Requirement:

(a) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis Code Set, unless specifically excluded in individual OMAP Provider rules;

(b) When billing using ICD-9-CM codes, all diagnosis codes are required to the highest degree of specificity;

(c) Hospitals are always required to bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(12) For claims requiring a procedure code the Provider must bill as instructed in the appropriate OMAP Provider rules and must use the appropriate HIPAA procedure Code Set such as CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. For claims that require the listing of a diagnosis or procedure code as a condition of payment, the code listed on the claim form must be the code that most accurately describes the Client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual Provider rules. Hospitals must follow national coding guidelines:

(a) When there is no appropriate descriptive procedure code to bill OMAP, the Provider must use the code for Unlisted Services. Instructions on the specific use of unlisted services are contained in the individual Provider rules. A complete and accurate description of the specific care, item, or service must be documented on the claim;

(b) Where there is one CPT, CDT or HCPCS code that according to CPT, CDT and HCPCS coding guidelines or standards, describes an array of services the Provider must bill OMAP using that code rather than itemizing the services under multiple codes. Providers must not "unbundled" services in order to increase OMAP payment.

(13) No Provider or its contracted agency (including Billing Providers) shall submit or cause to be submitted to OMAP:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service that has already been paid;

(c) Any claim upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form;

(d) Any claim for furnishing specific care, item(s), or service(s) that have not been provided.

(14) The Provider is required to submit an Individual Adjustment Request, or to refund the amount of the overpayment, on any claim where the Provider identifies an overpayment made by OMAP.

(15) A Provider who, after having been previously warned in writing by OMAP or the Department of Justice about improper billing practices, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to OMAP for up to triple the amount of the OMAP established overpayment received as a result of such violation.

(16) Third Party Resources (TPR):

(a) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances OMAP will be the payer of last resort;

(b) Providers must make reasonable efforts to obtain payment first from other resources. For the purposes of this rule "reasonable efforts" include, but are not limited to:

(A) Determining the existence of insurance or other resource by asking the recipient;

(B) Using an insurance database such as Electronic Eligibility Verification Services (EEVS) available to the Provider;

(C) Verifying the Client's insurance coverage through the Automated Information System (AIS) or the Medical Care Identification on each date of service and at the time of billing.

(c) Except as noted in (16)(d)(A through E), when third party coverage is known to the Provider, as indicated on the Medical Care Identification or through AIS, or any other means available, prior to billing OMAP the Provider must:

(A) Bill the TPR; and

(B) Except for pharmacy claims billed through OMAP's point-of-sale system the Provider must have waited 30 days from submission date of a clean claim and have not received payment from the third party; and

(C) Comply with the insurer's billing and authorization requirements; and

(D) Appeal a denied claim when the service is payable in whole or in part by an insurer.

(d) In accordance with federal regulations the Provider must bill the TPR prior to billing OMAP, except under the following circumstances:

(A) The covered health service is provided by an Intermediate Care Facility Services for the Mentally Retarded (ICF/MR);

(B) The covered health service is provided by institutional services for the mentally and emotionally disturbed;

(C) The covered health services are prenatal and preventive pediatric services;

(D) Services are covered by a third party insurer through an absent parent where the medical coverage is administratively or court ordered;

(E) When another party may be liable for an injury or illness (see definition of Liability Insurance), the Provider may bill the insurer or liable party or place a lien against a settlement or the Provider may bill OMAP. The Provider may not both place a lien against a settlement and bill OMAP. The Provider may withdraw the lien and bill OMAP within 12 months of the date of service. If the Provider bills OMAP the Provider must accept payment made by OMAP as payment in full. The Provider must not return the payment made by OMAP in order to accept payment from a liability settlement or liability insurer or place a lien against that settlement:

(i) In the circumstances outlined in (16)(d)(A through E) above, the Provider may choose to bill the primary insurance prior to billing OMAP. Otherwise, OMAP will process the claim and, if applicable, will pay the OMAP allowable rate for these services and seek reimbursement from the liable third party insurance plan;

(ii) In making the decision to bill OMAP the Provider should be cognizant of the possibility that the third party payer may reimburse the service at a higher rate than OMAP, and that once OMAP makes payment no additional billing to the third party is permitted by the Provider.

(e) The Provider may bill OMAP directly for services that are never covered by Medicare or another insurer on the appropriate form identified in the relevant Provider rules. Documentation must be on file in the Provider's records indicating this is a non-covered service for purposes of Third Party Resources. See the individual Provider rules for further information on services that must be billed to Medicare first;

(f) Providers are required to submit an Individual Adjustment Request showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit the Individual Adjustment Request within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery and/or sanction;

(A) When a Provider receives a payment from any source prior to the submission of a claim to OMAP, the amount of the payment must be shown as a credit on the claim in the appropriate field;

(B) Except as described in (15), any Provider who accepts third party payment for furnishing a service or item to an OMAP Client shall:

(i) Submit an Individual Adjustment Request after submitting a claim to OMAP following instructions in the individual Provider rules and supplemental billing information, indicating the amount of the third party payment; or

(ii) When the Provider has already accepted payment from OMAP for the specific service or item, the Provider shall make direct payment of the amount of the third party payment to OMAP. When the Provider chooses to directly repay the amount of the third party payment to OMAP, the Provider must indicate the reason the payment is being made and must submit with the check:

(I) An Individual Adjustment Request which identifies the original claim, name and number of the Client, date of service and item(s) or service(s) for which the repayment is made; or

(II) A copy of the Remittance Advice showing the original OMAP payment.

(g) OMAP reserves the right to make a claim against any third party payer after making payment to the Provider of service. OMAP may pursue alternate resources following payment if it deems this a more efficient approach. Pursue alternate resources includes, but is not limited to, requesting the Provider to bill the third party and to refund OMAP in accordance with (15) of this rule;

(h) For services rendered to a Medicare and Medicaid dual eligible Client, OMAP may request the Provider to submit a claim for Medicare payment and the Provider must honor that request. Under federal regulation, a Provider agrees not to charge a beneficiary (or the state as the beneficiary's subrogee) for services for which a Provider failed to file a timely claim (42 CFR 424) with Medicare despite being requested to do so.

(17) Full Use of Alternate Resources:

(a) OMAP will generally make payment only when other resources are not available for the Client's medical needs. Full use must be made of reasonable alternate resources in the local community;

(b) Except as provided in subsection (18) of this rule, alternate resources may be available:

(A) Under a federal or state worker's compensation law or plan;

(B) For items or services furnished by reason of membership in a prepayment plan;

(C) For items or services provided or paid for directly or indirectly by a health insurance plan or as health benefits of a governmental entity, such as:

(i) Armed Forces Retirees and Dependents Act (CHAMPVA);

(ii) Armed Forces Active Duty and Dependents Military Medical Benefits Act (CHAMPUS); and

(iii) Medicare Parts A and B.

(D) To residents of another state under that state's Title XIX or state funded medical assistance programs; or

(E) Through other reasonably available resources.

(18) Exceptions:

(a) Indian Health Services or Tribal Health Facilities. Pursuant to 42 CFR 35.61 subpart G and the Memorandum of Agreement in OAR 310-146-0000, Indian Health Services facilities and tribal facilities operating under a section 638 agreement are payors of last resort, and are not considered an alternate resource or TPR;

(b) Veterans Administration. Veterans who are also eligible for Medicaid benefits are encouraged to utilize Veterans' Administration facilities whenever possible. Veterans' benefits are prioritized for service related conditions and as such are not considered an alternate or TPR. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81, Renumbered from 461-013-0050, 461-013-0060, 461-013-0090 & 461-013-0020; AFS 47-1982, f. 4-30-82, & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 45-1983, f. 9-19-83, ef. 10-1-83; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 24-1985, f. 4-24-85, cert. ef. 6-1-85; AFS 33-1986, f. 4-11-86, ef. 6-1-86; AFS 43-1986, f. 6-13-86, ef. 7-1-86; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 14-1987, f. 5-31-87, ef. 4-1-87; AFS 38-1988, f. 5-17-88, cert. ef. 6-1-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0140, 461-013-0150, 461-013-0175 & 461-013-0180; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0260, 410-120-0280, 410-120-0300 & 410-120-0320; HR 31-1994, f. & cert. ef. 11-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-10-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 30-2001, f. 9-24-01, cert. ef 10-1-01; OMAP 23-2002, f. 6-14-02 cert. ef. 8-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 67-2005, f. 12-21-05, cert. ef. 1-1-06

Adm. Order No.: OMAP 68-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 410-121-0300
Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for pharmaceutical products and services provided to clients. OMAP, having temporarily amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing, permanently amended the rule with this Notice filing. OMAP updated Transmittal #37, with the October 17, 2005 email notice of Title XIX State Agency Letter Number, changes to the list, effective for services rendered on or after November 12, 2005, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300
CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact OMAP for most current website address). The FUL price listing will be updated approximately every six months.

(4) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, to be effective on or after November 12, 2005, and is available for downloading on OMAP's Website, (contact OMAP for most current website address). To request a hard copy, call OMAP.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90, Renumbered from 461-016-0330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp) f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05; OMAP 2-2005, f. 1-31-05, cert. ef. 2-1-05; OMAP 23-2005(Temp), f. & cert. ef. 4-1-05 thru 9-1-05; OMAP 29-2005, f. & cert. ef. 6-6-05; OMAP 56-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 59-2005(Temp), f. 11-8-05, cert. ef. 11-12-05 thru 5-1-06; OMAP 68-2005, f. 12-21-05, cert. ef. 1-1-06

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Adm. Order No.: OMAP 69-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 410-121-0320

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for pharmaceutical products and services provided to clients. Rule 410-121-0320, Oregon Maximum Allowable Cost (OMAC) lists generated monthly and each list indicates the amount, per product, that OMAP will reimburse to providers for products provided to OMAP clients during that particular month. OMAP will revise rule 410-121-0320 to include, by reference, all monthly First Health Service's OMAC listings received by OMAP for the time period of January 1, 2006 through and including December 1, 2006. Current OMAC lists are available on OMAP's website.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0320
Oregon Maximum Allowable Cost (OMAC)

(1) The Oregon maximum allowable cost, or the maximum amount that the Office of Medical Assistance Programs (OMAP) will reimburse for prescribed drugs, is determined by OMAP's claims processing company, First Health Services. First Health Services determines the maximum allowable cost on selected multiple-source drug designation when a bioequivalent drug product is available from at least two wholesalers serving the State of Oregon.

(2) First Health Services generates and maintains all official OMAC lists and provides a copy of each list to OMAP. OMAC lists are generated monthly and each list indicates the amount, per product, that OMAP will reimburse to providers for products provided to OMAP clients during that particular month. For example: The OMAC list, January 1, 2003, includes the amounts OMAP will reimburse for products provided during the month of January 2003; the list, February 1, 2003, covers the month of February 2003, etc.

(3) OMAP includes in rule by reference the OMAC lists for January 1, 2004, February 1, 2004, March 1, 2004, April 1, 2004, May 1, 2004, June 1, 2004, July 1,2004, August 1, 2004, September 1, 2004, October 1, 2004, November 1, 2004 and December 1, 2004.

(4) OMAP includes in rule by reference the OMAC lists for January 1, 2005, February 1, 2005, March 1, 2005, April 1, 2005, May 1, 2005, June 1, 2005, July 1,2005, August 1, 2005, September 1, 2005, October 1, 2005, November 1, 2005 and December 1, 2005.

(5) OMAP includes in rule by reference the OMAC lists for January 1, 2006, February 1, 2006, March 1, 2006, April 1, 2006, May 1, 2006, June 1, 2006, July 1, 2006, August 1, 2006, September 1, 2006, October 1, 2006, November 1, 2006, and December 1, 2006.

(6) Current OMAC lists are available for review and/or downloading on OMAP's website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/. Future lists, referenced in this rule, will be available and posted to OMAP's website upon receipt from First Health Services.

(7) The OMAC list does not apply if a prescriber certifies that a singlesource (brand) drug is medically necessary.

Stat. Auth.: ORS 184.750, 184.770, 411 & 414
Stats. Implemented: ORS 414.065
Hist.: AFS 56-1989, f. 9-29-89, cert. ef. 10-1-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90, Renumbered from 461-016-0340; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 6-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 17-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 28-2002(Temp), f. 6-28-02, cert. ef. 7-1-02 thru 12-1-02; OMAP 35-2002(Temp), f. & cert. ef. 8-14-02 thru 1-1-03; OMAP 38-2002(Temp), f. & cert. ef. 8-30-02 thru 1-15-03; OMAP 40-2002(Temp), f. & cert. ef. 10-1-02 thru 2-15-03; OMAP 68-2002(Temp), f. & cert. ef. 11-15-02 thru 4-1-03; OMAP 7-2003, f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 52-2003, f. & cert. ef. 8-5-03; OMAP 3-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 96-2004, f.12-30-04, cert. ef. 1-1-05; OMAP 98-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 69-2005, f. 12-21-05, cert. ef. 1-1-06

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Adm. Order No.: OMAP 70-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 410-125-0141
Subject: The Hospital Services program administrative rules govern the Office of Medical Assistance Programs' payments for hospital services to certain clients. OMAP, having temporarily amended 410-125-0141 to reflect an increase in the Unit Value component of the formula that reimburses hospitals for inpatient services paid on a Diagnosis Related Group (DRG) basis, permanently amended the rule, effective January 1, 2006. This increase is needed to bring the reimbursement for DRG hospitals more in line with Medicare rates.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0141
DRG Rate Methodology

(1) Diagnosis Related Groups:

(a) Diagnosis Related Groups (DRG) is a system of classification of diagnoses and procedures based on the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM);

(b) The DRG classification methodology assigns a DRG category to each inpatient service, based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status.

(2) Medicare Grouper: The Medicare Grouper is the software used to assign an individual claim to a DRG category. Medicare revises the Grouper program each year in October. The Office of Medical Assistance Programs (OMAP) uses the Medicare Grouper program in the assignment of inpatient hospital claims. The most recent version of the Medicare grouper will be installed each year within 90 days of the date it is implemented by Medicare. Where better assignment of claims is achieved through changes to the grouper logic, OMAP may modify the logic of the grouper program. OMAP will work with representatives of hospitals that may be affected by grouper logic changes in reaching a cooperative decision regarding changes. OMAP DRG weight tables can be found on the DHS web site.

(3) DRG Relative Weights:

(a) Relative weights are a measure of the relative resources required in the treatment of the average case falling within a specific DRG category;

(b) For most DRGs, OMAP establishes a relative weight based on federal Medicare DRG weights. For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs, Oregon Title XIX fee-for-service claims history is used. To determine whether enough claims exist to establish a reasonable weight for each state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRG, OMAP uses the following methodology: Using the formula N = where Z = 1.15 (a 75% confidence level), S is the standard deviation, and R = 10% of the mean. OMAP determines the minimum number of claims required to set a stable weight for each DRG (N must be at least 5). For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs lacking sufficient volume, OMAP sets a relative weight using:

(A) OMAP non-Title XIX claims data; or

(B) Data from other sources expected to reflect a population similar to the OMAP Title XIX caseload.

(c) When a test shows at the 90% confidence level that an externally derived weight is not representative of the average cost of services provided to the OMAP Title XIX population in that DRG, the weight derived from OMAP Title XIX claims history is used instead of the externally derived weight for that DRG.

(d) Those relative weights based on Federal Medicare DRG weights, will be established when changes are made to the DRG Grouper logic. State specific relative weights shall be adjusted, as needed, as determined by OMAP. When relative weights are recalculated, the overall Case Mix Index (CMI) will be kept constant. Reweighing of DRGs or the addition or modification of the grouper logic will not result in a reduction of overall payments or total relative weights.

(4) Case Mix Indexed: The hospital-specific case mix index is the total of all relative weights for all services provided by a hospital during a period, divided by the number of discharges.

(5) Unit Value: Hospitals larger than fifty (50) beds are reimbursed using the Diagnosis Related Grouper (DRG) as described in (2). Effective for services on or after:

(a) March 1, 2004, the Unit Value payment is 80% of the 2004 Medicare Unit Value and related data published in Federal Register/Vol.68, No. 148, August 1, 2003. The unit value is also referred to as the operating unit per discharge.

(b) August 15, 2005, the operating unit payment is 100% of 2004 Medicare and related data published in Federal Register/Vol. 68, No. 148, August 1, 2003. The unit value is also referred to as the operating unit per discharge.

(6) DRG Payment: The DRG payment to each Oregon DRG hospital is calculated by adding the unit value to the capital amount, then multiplied by the claim assigned DRG relative weight (out of state hospitals do not receive the capital amount).

(7) Cost Outlier Payments:

(a) Cost outlier payments are an additional payment made to in-state and contiguous hospitals for exceptionally costly services or exceptionally long lengths of stay provided to Title XIX and SF (State Facility) clients.

(b) For dates of service on and after March 1, 2004 the calculation to determine the cost outlier payment for Oregon DRG hospitals is as follows:

(A) Non-covered services (such as ambulance charges) are deducted from billed charges;

(B) The remaining billed charges are converted to hospital-specific costs using the hospital's cost-to-charge ratio derived from the most recent audited Medicare cost report and adjusted to the Medicaid caseload;

(C) If the hospital's net costs as determined above are greater than 270 percent of the DRG payment for the admission and are greater than $25,000, an additional cost outlier payment is made;

(D) Costs which exceed the threshold ($25,000 or 270% of the DRG payment, whichever is greater) are reimbursed using the following formula:

(i) Billed charges less non-covered charges, times;

(ii) Hospital-specific cost-to-charge ratio equals;

(iii) Net Costs, minus;

(iv) 270% of the DRG or $25,000 (whichever is greater), equals;

(v) Outlier Costs, times;

(vi) Cost Outlier Percentage, (cost outlier percentage is 50%), equals;

(vii) Cost Outlier Payment.

(E) Third party reimbursements are deducted from the OMAP calculation of payable amount;

(F) When hospital cost reports are audited, an adjustment will be made to cost outlier payments to reflect the actual Medicaid hospital-specific cost-to-charge ratio during the time cost outlier claims were incurred. The cost-to-charge ratio in effect for that period of time will be determined from the audited Medicare Cost Report and OMAP 42, adjusted to reflect the Medicaid mix of services.

(8) Capital:

(a) The capital payment is a reimbursement to in-state hospitals for capital costs associated with the delivery of services to Title XIX, non-Medicare persons. OMAP uses the Medicare definition and calculation of capital costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) For the dates of service on and after March 1, 2004 the Capital cost per discharge is one hundred (100) percent of the published Medicare capital rate for fiscal year 2004, see (5). The capital cost is added to the Unit Value and paid per discharge.

(9) Direct Medical Education:

(a) The direct medical education payment is a reimbursement to in-state hospitals for direct medical education costs associated with the delivery of services to Title XIX eligible persons. The Office of Medical Assistance Programs uses the Medicare definition and calculation of direct medical education costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) Direct Medical Education cost per discharge is calculated as follows:

(A) The direct medical education cost proportional to the number of TitleXIX non-Medicare discharges during the period from July 1, 1986 through June 30, 1987 are divided by the number of Title XIX non-Medicare discharges. This is the Title XIX Direct Medical Education Cost per discharge;

(B) The Title XIX Direct Medical Education cost per discharge for this period is inflated forward to January 1, 1992, using the compounded HCFA-DRI market basket adjustment.

(c) Direct Medical Education Payment Per Discharge:

(A) The number of Title XIX non-Medicare discharges from each hospital for the quarterly period is multiplied by the inflated Title XIX cost per discharge. This determines the current quarter's Direct Medical Education costs. This amount is then multiplied by 85%. Payment is made within thirty days of the end of the quarter;

(B) The Direct Medical Education Payment per Discharge will be adjusted at an inflation factor determined by the Department in consideration of inflationary trends, hospital productivity and other relevant factors.

(10) Indirect Medical Education:

(a) The indirect medical education payment is a reimbursement made to instate hospitals for indirect medical education costs associated with the delivery of services to Title XIX non-Medicare clients;

(b) Indirect medical education costs are those indirect costs identified by Medicare as resulting from the effect of teaching activity on operating costs;

(c) Indirect medical education payments are made to in-state hospitals determined by Medicare to be eligible for such payments. The indirect medical education factor in use by Medicare for each of these eligible hospitals at the beginning of the State's fiscal year is the Office of Medical Assistance Program's indirect medical education factor. This factor is used for the entire Oregon fiscal year;

(d) For dates of service on and after March 1, 2004 the calculation for the Indirect Medical Education quarterly payment is as follows: Total paid discharges during the quarter multiplied by the Case Mix Index, multiplied by the hospital specific February 29, 2004 Unit Value, multiplied by the Indirect Factor equals the Indirect Medical Education Payment;

(e) This determines the current quarter's Indirect Medical Education Payment. Indirect medical education payments are made quarterly to each eligible hospital. Payment for indirect medical education costs will be made within thirty days of the end of the quarter.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0006, 461-015-0020 & 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0570, 461-015-0590, 461-015-0600 & 461-015-0610; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 36-1990(Temp), f. 10-29-90, cert. ef. 11-1-90; HR 42-1990, f. & cert. ef. 11-30-90; HR 3-1991, f. & cert. ef. 1-4-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0840, 410-125-0880, 410-125-0900, 410-125-0920, 410-125-0960 & 410-125-0980; HR 35-1993(Temp), f. & cert. ef. 12-1-93; HR 23-1994, f. 5-31-94, cert. ef. 6-1-94; HR 11-1996(Temp), f. & cert. ef. 7-1-96; HR 22-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 45-1998, f. & cert. ef. 12-1-98; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 37-2005(Temp) f. & cert. ef. 8-15-05 thru 1-15-06; OMAP 70-2005, f. 12-21-05, cert. ef. 1-1-06

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Adm. Order No.: OMAP 71-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 410-141-0520
Subject: The Oregon Health Plan (OHP) administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for products and services provided to certain clients. Rule 410-141-0520 incorporates in rule by reference the Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List). OMAP amended 410-141-0520 to incorporate the January 1, 2006 Prioritized List of Health Services.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520
Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Ancillary Services and Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website (http://www.oregon.gov/DHS/healthplan/priorlist/main.shtml) or, for a hardcopy, contact the Office of Health Policy and Research. This rule incorporates by reference the January 1, 2006 Prioritized List including expanded definitions and practice guidelines, and available on the HSC website.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Mental Health and Addiction Services and approval to bill Medicaid for CD services.

(4) The January 1, 2006 Prioritized List, is in effect and condition/treatment pairs through line 530 are funded.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-

2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06

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Adm. Order No.: OMAP 72-2005(Temp)
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06 thru 6-28-06
Notice Publication Date:
Rules Amended: 410-120-1295
Subject: The General Rules Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. OMAP temporarily amended OAR 410-120-1295 to revise the reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered October 1, 2005 through December 31, 2005. The revised document is to replace the document originally filed for October 1, 2005. This document contained information for outpatient hospital reimbursement that was based upon the best data available at the time of the original rule filing, however the original document has since been found not to be consistent with the methodology outlined in ORS 414.743. The revised document filed with this temporary rule is posted on the Departments website at http://www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html.

OMAP also temporarily amended OAR 410-120-1295 to reference the revised reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered January 1, 2006 through December 31, 2006. These documents are necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and is referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services rendered to medical assistance clients. The revised document filed with this temporary rule is posted on the Departments website at http://www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1295
Non-Participating Provider

(1) For purposes of this rule, a Provider enrolled with the Office of Medical Assistance Programs (OMAP) that does not have a contract with an OMAP-contracted Prepaid Health Plan (PHP) is referred to as a Non-Participating Provider.

(2) For covered services that are subject to reimbursement from the PHP, a Non-Participating Provider, other than a hospital governed by (3)(b) below, must accept from the OMAP-contracted PHP, as payment in full, the amount that the provider would be paid from OMAP if the client was fee-for-service (FFS).

(3) The OMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital, for dates of service on or after October 1, 2003 reimbursement will be based upon the following:

(i) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925;

(ii) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (3)(b)(i) and for outpatient service rates for subsection (3)(b)(ii), are calculated by the Department's contracted actuarial firm. The FCHP Non-Contracted DRG Hospital Reimbursement Rates are on the Department's Web site at: www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html. Each document shows rates for a specific date range. The document dated:

(a) October 1, 2003, is effective for dates of service October 1, 2003 through September 30, 2004;

(b) October 1, 2004, is effective for dates of service October 1, 2004 through September 30, 2005;

(c) October 1, 2005, is effective for dates of service October 1, 2005 through December 31, 2005; (corrected December 23, 2005)

(d) January 1, 2006, is effective for dates of service January 1, 2006 through December 31, 2006 (corrected December 23, 2005).

(5) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for:

(a) Medical appropriateness;

(b) Compliance with emergency admission or prior authorization policies;

(c) Member's benefit package

(d) The FCHP contract and OMAP Administrative Rules.

(6) After notification from the non-participating hospital, the FCHP may:

(a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;

(b) Perform concurrent review; and/or

(c) Perform case management activities.

(7) In the event of a disagreement between the FCHP and Hospital, the provider may appeal the decision by asking for an administrative review as specified in OAR 410-120-1580.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.743
Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35 2005, f. 7-21-05, cert. ef. 7-22-05; OMAP 49-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 63-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 66-2005(Temp), f. 12-13-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 72-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-28-06

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Adm. Order No.: OMAP 73-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 410-125-0090, 410-125-0181, 410-125-0190, 410-125-0195, 410-125-0201, 410-125-0210, 410-125-1020, 410-125-1060
Subject: The Hospital Services program administrative rules govern the Office of Medical Assistance Programs' (OMAP) payment for fee-for-services hospital services to clients. OMAP amended 410-125-0210 to correct the reimbursement methodology. OMAP amended OAR 410-125-1060 to comply with the Centers of Medicare and Medicaid Systems (CMS) direction on reimbursement to Hospital Based Rural Health Clinics (HBRHC). OMAP amended 410-125-0090, 410-125-0181, 410-125-0190, 410-125-0195, 410-125-0201, and 410-125-1020 to change reimbursement for non-clinical labs and radiology from the fee schedule to a percent of charges.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0090
Inpatient Rate Calculations — Type A, Type B, and Critical Access Oregon Hospitals

(1) The Office of Rural Health designates Type A, Type B, and Critical Access Oregon Hospitals.

(2) Reimbursement to Type A, Type B, and Critical Access Oregon Hospitals for covered inpatient services is as follows:

(a) Interim reimbursement for inpatient covered services is the hospital specific cost to charge percentage from the last finalized cost settlement, except Laboratory and Radiology services are based on the Office of Medical Assistance Programs (OMAP) fee schedule;

(b) Retrospective cost-based reimbursement is made during the annual cost settlement period for all covered inpatient services, except for the hospitals that have payment contracts with managed care plans;

(c) Cost-based reimbursement is derived from the most recent audited Medicare Cost Report and adjusted to reflect the Medicaid mix of services.

(3) Type A, Type B, and Critical Access Hospitals are:

(a) Eligible for disproportionate share reimbursements, but must meet the same criteria as other hospitals. See OAR 410-125-0150 for eligibility criteria and reimbursement calculation;

(b) Type A, Type B, and Critical Access Hospitals do not receive cost outlier, capital, or medical education payments.

(4) Notwithstanding subsection (2) of this rule, this subsection becomes effective for dates of service on and after January 1, 2006, but will not be operative as the basis for payments until OMAP determines all necessary federal approvals have been obtained. Reimbursement to Type A, Type B, and Critical Access Oregon Hospitals for covered inpatient services is as follows:

(a) Interim reimbursement for inpatient-covered services is the hospital specific cost to charge percentage from the last finalized cost settlement, except clinical laboratory services which are based on the Office of Medical Assistance Programs (OMAP) fee schedule;

(b) Retrospective cost-based reimbursement is made for all Fee-For-Service covered inpatient services during the annual cost settlement period;

(c) Cost-based reimbursement is derived from the most recent audited Medicare Cost Report and adjusted to reflect the Medicaid mix of services.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 68-1981, f. 9-30-81, ef. 10-1-82; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0006, 461-015-0036, 461-015-0065 & 461-015-0124; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0580; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0860; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06

410-125-0181
Non-Contiguous and Contiguous Area Out-of-State Hospitals — Outpatient Services

Non-contiguous area hospitals are out-of-state hospitals located more than 75 miles outside the Oregon border. Contiguous area hospitals are out-of state hospitals located less than 75 miles outside the Oregon border. Unless such hospitals have an agreement with the Office of Medical Assistance Programs (OMAP) regarding reimbursement for specialized services, these hospitals will be reimbursed as follows:

(1) Laboratory, diagnostic and therapeutic radiology, nuclear medicine, CT scans, MRI services, other imaging services, and maternity case management services will be reimbursed under an OMAP fee schedule.

(2) All other outpatient services will be reimbursed at 50 percent of billed charges. There is no cost settlement.

(3) Notwithstanding subsections (1)–(2) of this rule, this subsection becomes effective for dates of service on and after January 1, 2006, but will not be operative as the basis for payments until OMAP determines all necessary federal approvals have been obtained. Non-contiguous area hospitals are out-of-state hospitals located more than 75 miles outside the Oregon border. Contiguous area hospitals are out-of-state hospitals located less than 75 miles outside the Oregon border. Unless such hospitals have an agreement with OMAP regarding reimbursement for specialized services, these hospitals will be reimbursed as follows:

(a) Clinical laboratory and maternity case management services will be reimbursed under an OMAP fee schedule;

(b) All other outpatient services will be reimbursed at 50 percent of billed charges. There is no cost settlement.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert ef 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0540; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0780; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 58-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 16-2004(Temp), f. & cert. ef. 3-15-04 thru 8-15-04; OMAP 27-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06

410-125-0190
Outpatient Rate Calculations — Type A, Type B, and Critical Access Oregon Hospitals

(1) The Office of Rural Health designates Type A, Type B, and Critical Access Oregon Hospitals.

(2) Reimbursement to Type A, Type B, and Critical Access Oregon Hospitals for covered outpatient services is as follows:

(a) Interim reimbursement for outpatient covered services is the hospital specific cost to charge percentage from the last finalized cost settlement, except laboratory, diagnostic and therapeutic radiology, nuclear medicine, CT scans, MRI services, other imaging services, and maternity case management services which are based on the Office of Medical Assistance Programs (OMAP) fee schedule;

(b) Retrospective cost-based reimbursement is made for all Fee-For-Service covered outpatient services during the annual cost settlement period;

(c) Cost-based reimbursement is derived from the most recent audited Medicare Cost Report and adjusted to reflect Medicaid mix of services.

(3) Notwithstanding subsection (2) of this rule, this subsection becomes effective for dates of service on and after January 1, 2006, but will not be operative as the basis for payments until OMAP determines all necessary federal approvals have been obtained. Reimbursement to Type A, Type B, and Critical Access Oregon Hospitals for covered outpatient services is as follows:

(a) Interim reimbursement for outpatient covered services is the hospital specific cost to charge percentage from the last finalized cost settlement, except clinical laboratory and maternity case management services which are based on the Office of Medical Assistance Programs (OMAP) fee schedule;

(b) Retrospective cost-based reimbursement is made for all Fee-For-Service covered outpatient services during the annual cost settlement period;

(c) Cost-based reimbursement is derived from the most recent audited Medicare Cost Report and adjusted to reflect Medicaid mix of services.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0540 & 461-015-0550; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0780 & 410-125-0800; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06

410-125-0195
Outpatient Services – DRG Hospitals

In-State DRG Hospitals DRG hospital outpatient services are reimbursed under a cost based methodology.

(1) Interim reimbursement:

(a) For dates of service on and after March 1, 2004 the interim reimbursement percentage is developed using the cost-to-charge ratio methodology, derived from the Medicare cost report, and applied to billed charges. The interim payment is the estimated percentage needed to achieve 80% of hospital cost in aggregate. This interim percentage is applied to all outpatient charges except for the following services: for laboratory, diagnostic and therapeutic radiology, nuclear medicine, CT scans, MRI services, other imaging services, and maternity case management;

(b) The OMAP fee schedule is used as interim reimbursement for laboratory, diagnostic and therapeutic radiology, nuclear medicine, CT scans, MRI services, other imaging services, and maternity case management services.

(2) Settlement reimbursement:

(a) For Title XIX/Title XXI clients; an adjustment to 80 percent of outpatient costs for dates of service on and after March 1, 2004. This adjustment is made during the cost settlement process;

(b) For GA clients; outpatient hospital services are reimbursed at 50 percent of billed charges or 59 percent of costs, whichever is less.

(3) Notwithstanding subsection (1) of this rule, this subsection becomes effective for dates of service on and after January 1, 2006, but will not be operative as the basis for payments until OMAP determines all necessary federal approvals have been obtained. Interim reimbursement:

(a) For dates of service on and after March 1, 2004 the interim reimbursement percentage is developed using the cost-to-charge ratio methodology, derived from the Medicare cost report, and applied to billed charges. The interim payment is the estimated percentage needed to achieve 80% of hospital cost in aggregate. This interim percentage is applied to all outpatient charges except for the following services: for clinical laboratory and maternity case management;

(b) The OMAP fee schedule is used as interim reimbursement for clinical laboratory and maternity case management services.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0540 & 461-015-0550; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0780 & 410-125-0800; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06

410-125-0201
Independent ESRD Facilities

(1) Independent End Stage Renal Dialysis (ESRD) Facilities:

(a) ESRD Facilities are reimbursed for Continuous Ambulatory Peritoneal Dialysis.

(b) (CAPD), Continuous Cycling Peritoneal Dialysis (CCPD), and Hemodialysis:

(A) Composite at 80% of the Medicare allowed amount, except for Epoetin.

(B) Epoetin is reimbursed at 100% of the Medicare maximum allowed amount.

(2) Other dialysis related charges which are allowed by Medicare, are reimbursed at 80% of the Medicare maximum allowed amount. Allowable clinical laboratory charges are reimbursed according to the Office of Medical Assistance Programs (OMAP) fee schedule. Billed charges may not exceed the Medicare maximum allowable amount.

(3) OMAP follows Medicare's criteria for coverage of Epoetin, Intradialytic Parenteral Nutrition services, and the frequency schedule for laboratory tests for ESRD services. When laboratory tests are performed at a frequency greater than specified by Medicare, the additional tests must be billed separately, and are covered by OMAP only if the tests are medically justified by accompanying documentation. A diagnosis of ESRD alone is not sufficient medical evidence to warrant coverage of the additional tests.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0124; HR 9-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0560; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0820; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06

410-125-0210
Third Party Resources and Reimbursement

(1) The Office of Medical Assistance Programs establishes maximum allowable reimbursements for all services. When clients have other third party payers, the payment made by that payer is deducted from the OMAP maximum allowable payment.

(2) OMAP will not make any additional reimbursement when a third party pays an amount equal to or greater than the OMAP reimbursement. OMAP will not make any additional reimbursement when a third party pays 100 percent of the billed charges, except when Medicare Part A is the primary payer.

(3) When Medicare is Primary:

(a) OMAP calculates the reimbursement for these claims in the same manner as described in the Inpatient and Outpatient Rates Calculations Sections above;

(b) Payment is the OMAP allowable payment, less the Medicare payment, up to the amount of the deductible and/or coinsurance due. For clients who are Qualified Medicare Beneficiaries OMAP does not make any reimbursement for a service that is not covered by Medicare. For clients who are Qualified Medicare/Medicaid Beneficiaries OMAP payment is the OMAP allowable, less the Part A payment up to the amount of the deductible due for services by either Medicare or Medicaid.

(4) When Medicare is Secondary:

(a) An individual admitted to a hospital may have Medicare Part B, but not Part A. OMAP calculates the reimbursement for these claims in the same manner as described in the Inpatient Rates Calculations Section above. Payment is the OMAP allowable payment, less the Medicare Part B payment;

(b) An individual receiving services in the outpatient setting may have most services covered by Medicare Part B. OMAP payment is the OMAP allowable payment, less the Part B payment, up to the amount of the coinsurance and deductible due. For services provided in the outpatient setting which are not covered by Medicare, (for example, Take Home Drugs), OMAP payment is the OMAP allowable payment as calculated in the Outpatient Rates Calculation Section above;

(c) Most Medicare-Medicaid clients have Medicare Part A, Part B, and full Medicaid coverage. OMAP refers to these clients as Qualified Medicare-Medicaid Beneficiaries (QMM). However, a few individuals have Medicare coverage and only limited additional coverage through Medicaid. OMAP refers to these clients as Qualified Medicare Beneficiaries (QMB). For QMB clients, OMAP does not make reimbursement for a service that is a not covered service for Medicare.

(d) Clients who are Qualified Medicare-Medicaid Beneficiaries will have coverage for services that are not covered by Medicare if those services are covered by OMAP.

(5) For clients with Physician Care Organization (PCO) or Managed Care Organization (MCO) Coverage, OMAP payment is limited to those services that are not the responsibility of the PCO or MCO. Payment is made at OMAP rates.

(6) Other Insurance:

(a) OMAP pays the maximum allowable payment as described in the Inpatient and Outpatient Rates Calculations, less any third party payments;

(b) OMAP will not make additional reimbursements when a third party payor (other than Medicare) pays an amount equal to or greater than the OMAP reimbursement, or 100 percent of billed charges.

(7) Medically Needy with Spend-Down. Reimbursement is the OMAP maximum allowable payment for covered services less the amount of the spend-down due.

Stat. Auth.: ORS 184.750, 184.770, 411 & 414
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 60-1982, f. & ef. 7-1-82; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 46-1987, f. & ef. 10-1-87; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0056; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0640; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-1000; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06

410-125-1020
Filing of Cost Statement

(1) The hospital must file with Office of Medical Assistance Programs (OMAP), an annual Calculation of Reasonable Cost (OMAP 42), covering the latest fiscal period of operation of the hospital:

(a) A Calculation of Reasonable Cost statement is filed for less than an annual period only when necessitated by the hospital's termination of their agreement with OMAP, a change in ownership, or a change in the hospital's fiscal period;

(b) The hospital must use the same fiscal period for the OMAP 42 as that used for its Medicare report. If it doesn't have an agreement with Medicare, the hospital must use the same fiscal period it uses for filing its federal tax return;

(c) The report must be filed for both inpatient and outpatient services, even if the service is paid under a prospective payment system or fee schedule (e.g., DRG payments, outpatient clinical laboratory, etc.);

(d) In the absence of an agreement with Medicare, the hospital must use the same fiscal period as that used for filing their Federal tax return.

(2) Twelve months after the hospital's fiscal year end, OMAP will send the hospital a computer printout listing all transactions between the hospital and OMAP during that auditing period. The Calculation of Reasonable Cost statement (OMAP 42) is due within 90 days of receipt by the hospital of the computer printout. Failure to file within 90 days may result in a 20 percent reduction in the payment rate:

(a) Hospitals without an agreement with Medicare may be subject to a field audit;

(b) Hospitals without an agreement with Medicare are required to submit a financial statement giving details of all assets, liabilities, income, and expenses, audited by a Certified Public Accountant.

(3) Improperly completed or incomplete Calculation of Reasonable Cost statements will be returned to the hospital for proper completion. The statement is not considered to be filed until it is received in a correct and complete form.

(4) If a hospital knowingly, or has reason to know, files a cost statement containing false information, such action constitutes cause for termination of its agreement with OMAP. Hospitals filing false reports may also be referred to prosecution under applicable statutes.

(5) Each Calculation of Reasonable Cost statement submitted to OMAP must be signed by the individual who normally signs the hospital's Medicare reports, federal income tax return, and other reports. If the hospital has someone, other than an employee prepare the cost statement, that individual will also sign the statement and indicate his or her status with the hospital.

(6) Notwithstanding subsection (1) of this rule, this subsection becomes effective for dates of service on and after January 1, 2006, but will not be operative as the basis for payments until OMAP determines all necessary federal approvals have been obtained. The hospital must file with Office of Medical Assistance Programs (OMAP), an annual Calculation of Reasonable Cost (OMAP 42), covering the latest fiscal period of operation of the hospital:

(a) A Calculation of Reasonable Cost statement is filed for less than an annual period only when necessitated by the hospital's termination of their agreement with OMAP, a change in ownership, or a change in the hospital's fiscal period;

(b) The hospital must use the same fiscal period for the OMAP 42 as that used for its Medicare report. If it doesn't have an agreement with Medicare, the hospital must use the same fiscal period it uses for filing its federal tax return;

(c) The report must be filed for both inpatient and outpatient services, even if the service is paid under a prospective payment system or fee schedule (e.g., DRG payments, outpatient clinical laboratory, etc.);

(d) In the absence of an agreement with Medicare, the hospital must use the same fiscal period as that used for filing their Federal tax return.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Former (2) thru (5) Renumbered to 461-015-0121 thru 461-015-0124; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1987, f. & ef. 10-1-87; AFS 39-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0105, 461-015-0120 & 461-015-0122; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0650; HR 42-1991, f. & cert. ef. 10-1-91; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06

410-125-1060
Fiscal Audits

(1) Year-end fiscal audits will include retrospective examination and verification of claims and the determination of allowable charges and costs of hospital services provided to Office of Medical Assistance Programs (OMAP) clients.

(2) The principal source document for the fiscal audit of Title XIX/Title XXI and General Assistance patient billings and payments for a given fiscal period is the OMAP data processing printout. This printout includes all transactions for the audit period. Using gross totals from this printout and applying other information from OMAP records, information received from the hospital, and other sources, OMAP will compile detailed schedules of adjustments and revise the gross totals. A revised Calculation of Reasonable Cost Statement (OMAP 42) will be prepared using revised totals and information from the Medicare report.

(3) Cost Settlements: OMAP will send the hospital a letter stating the amount of underpayment or overpayment calculated by OMAP for the fiscal year examined. The letter will also state the hospital's inpatient/outpatient interim reimbursement rate for the period from the effective date of the change until the next fiscal year's audit is completed. Payment of the cost-settlement amount is due and payable within 30 days from the date of the letter.

(4) OMAP, at its discretion, may grant a (30) thirty-day extension for the purpose of reviewing the cost settlement upon a written request by the hospital. If a (30) thirty-day extension is granted, payment of the cost settlement amount is due within sixty (60) days from the date of the letter. If the provider chooses to appeal the decision or rate, a written request for an administrative review, or contested case must be received by OMAP within (30) thirty-days of the date of the letter notifying the hospital of the settlement amount and interim rate, or within sixty (60) days if OMAP has granted a thirty (30) day extension, not withstanding the time limits in OAR 410-120-1580(3) or 410-120-1660(1). Upon receipt of the request, OMAP will attempt to resolve any differences informally with the provider before scheduling the administrative review or hearing.

(5) Under extraordinary circumstances, OMAP, at its discretion, may negotiate a repayment schedule with a hospital. The hospital may be required to submit additional information to support the hospital's request for a repayment schedule. The hospital will be required to pay interest associated with extended payments granted by OMAP.

(6) The revised Calculation of Reasonable Cost, copies of adjustment schedules, and a copy of the printout are available to the hospital upon request. For Type A rural hospitals the Calculation of Reasonable Cost Statement will reflect the difference between payment at 100% of costs and payment for dates-of-services on or after January 1, 2006 under the fee schedule for clinical laboratory services provided by the hospital. An adjustment to the Cost Settlement will be made to reimburse a Type A hospital at 100% of costs for laboratory and radiology services provided to Medical Assistance Program clients during the period the hospital was designated a Type A hospital. Settlements to Type B and Critical Access hospitals will be made within the legislative appropriation.

(7) The adjusted Professional Component Cost-to-Charge ratio(s) will be applied to all corresponding revenue code charges as listed on the Hospital Claim Detail Reports for cost settlements finalized on or after October 1, 1999.

(8) Hospital Based Rural Health Clinics shall be subject to the rules in the Hospital Services for the Oregon Health Plan Guide for Type A and B Hospitals. Hospital Based Rural Health Clinics cost settlements for dates of service from January 1, 2001 shall be finalized to cost.

(9) No interim settlements will be made. No settlements will be made until after receipt and review of the audited Medicare cost report.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(3); AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1987, f. & ef. 10-1-87; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0122; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0670; HR 33-1990(Temp), f. & cert. ef. 10-1-90; HR 43-1990, f. & cert. ef. 11-30-90; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 36-1993, f. & cert. ef. 12-1-93; HR 24-1995, f. 12-29-95, cert. ef. 1-1-96; HR 3-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06

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Department of Human Services, Mental Health and Developmental Disability Services Chapter 309

Adm. Order No.: MHD 9-2005
Filed with Sec. of State: 12-28-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Adopted: 309-120-0070, 309-120-0075, 309-120-0080
Rules Repealed: 309-120-0070(T), 309-120-0075(T), 309-120-0080(T)
Subject: The Department of Human Services (DHS), Office of Mental Health and Addiction Services is permanently adopting rules relating to the Oregon Youth Authority (OYA) Mental Health Treatment Program. These rules are necessary in order to implement 2005 Oregon Laws, Chapter 439 (HB 2141) relating to the assignment and transfer of OYA offenders to a state mental hospital listed in ORS 426.010 or a facility designated by DHS for evaluation and treatment.
Rules Coordinator: Diana Nerby—(503) 947-1186

309-120-0070
Purpose

These rules prescribe procedures by which offenders in Oregon Youth Authority (OYA) close custody facilities may be transferred to a state mental hospital or a facility designated by the Department of Human Services (DHS) for evaluation and treatment.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 420.500 & 420.505
Stats. Implemented: ORS 179.040, 179.473, 179.475, 420.500 & 420.505

Hist.: MHD 8-2005(Temp), f. & cert. ef. 7-15-05 thru 1-7-06; MHD 9-2005, f. 12-28-05, cert. ef. 1-1-06

309-120-0075
Definitions

As used in these rules:

(l) "Close custody facility" means any of the secure facilities operated by the OYA, including, but not limited to, youth correctional facilities, work/study camps, and transition camps.

(2) "Facility designated by the Department of Human Services (DHS)" means a hospital or secure non-hospital facility designated by DHS to provide evaluation and treatment services for offenders under the age of 18.

(3) "Hearing Officer" means an independent decision maker designated to conduct an administrative commitment hearing for an offender.

(4) "Mentally ill offender" means an offender who, because of a mental disorder or a severe emotional disorder, is one or more of the following:

(a) Dangerous to self or others;

(b) Is unable to provide for basic personal needs and is not receiving such psychiatric care as is necessary for health or safety; or

(c) An offender, who unless treated, will continue, with a reasonable medical probability, to physically or mentally deteriorate so that the offender will become a person described under either or both subparagraph (4)(a) or (4)(b) of this rule.

(5) "Offender" means a person placed in OYA close custody facility, including inmates in the legal custody of the Department of Corrections (DOC).

(6) "State Mental Hospital" as defined in ORS 426.010. Except as otherwise ordered by the DHS pursuant to ORS 179.325, the Oregon State Hospitals in Salem, Marion County, and Portland, Multnomah County, and the Blue Mountain Recovery Center in Pendleton, Umatilla County, will be used as state hospitals for the care and treatment of mentally ill offenders age 18 and over who are transferred by the OYA pursuant to these rules.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 420.500 & 420.505
Stats. Implemented: ORS 179.040, 179.473, 179.475, 420.500 & 420.505
Hist.: MHD 8-2005(Temp), f. & cert. ef. 7-15-05 thru 1-7-06; MHD 9-2005, f. 12-28-05, cert. ef. 1-1-06

309-120-0080
Procedures for Transfer

(l) The OYA close custody facility Superintendent, the Director of the OYA, or the Director's designee may request that the Superintendent of a state mental hospital or a facility designated by DHS for evaluation and treatment accept a transfer of a mentally ill offender to a state mental hospital or facility designated by DHS.

(2) If the Superintendent of the state mental hospital or facility designated by DHS approves a transfer request made under paragraph (1) of this rule, the offender will be transferred.

(3) An offender may be transferred to a state mental hospital or a facility designated by DHS for stabilization and evaluation for mental health treatment for a period not to exceed 30 days unless the transfer is extended with offender consent or following an administrative commitment hearing pursuant to paragraph (4) of this rule.

(4) Administrative commitments for offenders in the legal custody of the DOC and in the physical custody of the OYA will be accomplished through a hearing conducted by an OYA hearing officer in accordance with these rules. DOC offenders in OYA physical custody requiring mental health evaluation and treatment will be transferred directly from an OYA facility to a state mental hospital listed in ORS 426.010 or a hospital or facility designated by DHS and returned directly to the OYA facility.

(5) The DHS will provide for an administrative commitment hearing conducted by a hearing officer employed or under contract with the OYA for administrative commitment or extension of the transfer of the offender if:

(a) The DHS determines that administrative commitment for treatment for a mental illness is necessary or advisable or that DHS needs more than 30 days to stabilize or evaluate the offender; and

(b) The offender does not consent to the administrative commitment or an extension of the transfer.

(6) The administrative commitment hearing process will, at a minimum, include the following procedures:

(a) Not less than 24 hours before the administrative commitment hearing is scheduled to occur, the hearing officer will provide written notice of the hearing to the offender and the offender's parent/guardian if the offender is less than 18 years of age.

(b) The notice will include the following information:

(A) A statement that an administrative commitment to a state mental hospital listed in ORS 426.010 or a facility designated by DHS, or an extension of the transfer, is being considered.

(B) A concise statement of the reason for administrative commitment or extension of the transfer.

(C) The offender's right to a hearing.

(D) The time and place of the hearing.

(E) Notice that the purpose of the administrative commitment hearing is to determine whether there is clear and convincing evidence that the offender is a mentally ill person as defined in ORS 426.005 such that administrative commitment or an extension of the transfer is warranted.

(F) The names of persons who have given information relevant to of the administrative commitment or extension of the transfer, and the offender's right to have these persons present at the administrative commitment hearing for the purposes of confrontation and cross-examination.

(G) The offender's right to admit or deny the allegations and present letters, documents, affidavits, or persons with relevant information at the administrative hearing in support of his/her defense or contentions, subject to the exclusions and restrictions provided in these rules.

(H) The offender's right to be represented by an attorney at his/her own expense. Assistance by a qualified and independent person approved by the hearing officer will be ordered upon a finding that assistance is necessary based upon the offender's financial inability to provide an assistant, language barriers, or competence and capacity of an offender to prepare a defense, to understand the proceedings, or to understand the rights available to him or her. An offender subject to an administrative commitment hearing may not receive assistance from another offender.

(I) A copy of this rule.

(c) The administrative commitment hearing will be held no more than five (5) days from the date of the written notice of the hearing.

(A) Prior to the commencement of the administrative commitment hearing, the hearing officer will furnish the offender a written explanation of the proceedings.

(B) The administrative commitment hearing will be conducted by a hearing officer employed or under contract with the OYA. The hearing officer will not have participated in any previous way in the assessment process.

(C) At the administrative commitment hearing, the offender will have an opportunity to be heard in person and through his/her attorney or independent assistant, if any.

(d) The administrative commitment hearing will be conducted in the following manner.

(A) Statement and evidence of the DHS in support of the action.

(B) Statement and evidence of the offender.

(C) Questioning, examination, or cross-examination of witnesses, unless in the opinion of the hearing officer an informant or witness would be subjected to risk of harm if his/her identity is disclosed.

(i) The offender's attorney or assistant, if any, may cross-examine witnesses, unless the hearing officer determines that it is necessary to deny cross-examination to preserve the anonymity of the witness.

(ii) If the offender has no attorney, the OYA Superintendent or designee will, if he/she has not already done so, appoint a qualified and independent person not directly involved with the offender, to cross-examine the witness for the offender. The hearing may be recessed if necessary for this purpose.

(D) The administrative commitment hearing may be continued with recesses as determined by the hearing officer.

(E) The hearing officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial evidence.

(F) The burden of presenting evidence to support a fact or position rests on the proponent of that fact or position. An offender may be administratively committed or the transfer extended only if the hearing officer finds by clear and convincing evidence that the offender is a mentally ill person as defined in ORS 426.005.

(G) Exhibits will be marked and the markings will identify the person offering the exhibit. The exhibits will be preserved by the OYA as part of the record of the proceedings.

(H) Evidentiary rules are as follows.

(i) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs is admissible.

(ii) Irrelevant, immaterial, or unduly repetitious evidence will be excluded.

(iii) All offered evidence, not objected to, will be received by the hearing officer subject to his/her power to exclude irrelevant, immaterial, or unduly repetitious evidence.

(iv) Evidence objected to may be received by the hearing officer with rulings on its admissibility or exclusion to be made at the hearing or at the time a final order is issued.

(I) All testimony will be given under oath.

(J) The hearing officer may discontinue the commitment proceedings at any time and may return the offender to the OYA facility.

(7) The hearing officer will make a written summary of what occurs at the hearing, including the response of the offender and the substance of the documents or evidence given in support of administrative commitment.

(a) A mechanical recording of all oral testimony and presentations will be made. This tape may be reviewed by the hearing officer before any findings are determined, or in the event of a judicial review.

(b) Tapes will be kept at least 120 days after the final order is issued.

(8) The hearing officer will issue a written proposed order that contains:

(a) Rulings on admissibility of offered evidence and other matters;

(b) Findings of fact (each ultimate fact as determined by the hearing officer based on the evidence before it); and

(c) Conclusions and recommendations for action by the hearing officer.

(A) No Justification: The hearing officer may find that the evidence does not support placement in a state mental hospital listed in ORS 426.010 or a hospital or facility designated by DHS, in which case the hearing officer will recommend that the offender return to his or her former status with all rights and privileges of that status. The hearing record will be processed with final action subject to review by the Director of DHS or designee. The findings must be on the merits. Technical or clerical errors in the writing or processing of the transfer request, or both, will not be grounds for a no justification finding, unless there is substantial prejudice to the offender.

(B) Justification: The hearing officer may find the evidence supports the offender's placement in a state mental hospital listed in ORS 426.010 or a hospital or facility designated by DHS, in which case the hearing officer will so inform the offender and recommend that the offender's administrative commitment exceed 30 days. The hearing record will be processed with final action subject to review by the Director of DHS or designee. An offender's administrative commitment to a state mental hospital will not exceed 180 days unless the commitment is renewed in a subsequent administrative hearing in accordance with these rules.

(9) Hearing Record:

(a) Upon completion of a hearing, the hearing officer will prepare and cause to be delivered to the Director of DHS or designee a hearing record within three (3) days from the date of the hearing.

(b) The hearing record will include:

(A) Examination reports

(B) Notice of hearing and rights;

(C) Recording of hearing;

(D) Supporting material(s); and

(E) Findings of Fact, Conclusions, and Recommendation of the hearing officer.

(10) The results of any hearing held to place an offender in a state mental hospital for administrative commitment will be reviewed and approved by the Director of DHS or designee. The Director of DHS or designee will review the Findings-of-Fact, Conclusions, and Recommendation of the hearing officer, in terms of the following factors:

(a) Was there substantial compliance with this rule;

(b) Was the decision based on substantial information; and

(c) Was the decision proportionate to the information and consistent with the provisions of this rule.

(11) Within three (3) days of the receipt of the hearing officer's report, the Director of DHS or designee will enter an order, which may:

(a) Affirm the recommendation;

(b) Modify the recommendation;

(c) Reverse the recommendation; or

(d) Reopen the hearing for the introduction and consideration of additional evidence.

(12) When the Director of DHS or designee takes action to modify or reverse, he or she must state the reason(s) in writing and immediately notify the offender, hearing officer, and the Superintendent of the sending OYA facility.

(13) When the Director of DHS or designee reopens the hearing under this rule, the hearing officer will, pursuant to these rules, conduct the reopened hearing and prepare an amended hearing record within three (3) days of the reopened hearing. The Director of DHS or designee will review the hearing officer's recommendation and enter an amended order, which may affirm, modify, or reverse the hearing officer's recommendation.

(14) Extension of Transfer: If DHS determines that the administrative commitment must exceed 180 days in order to stabilize the offender; the administrative commitment must be renewed in a subsequent administrative commitment hearing held in accordance with these rules.

(15) Notwithstanding this rule, an administrative commitment may not continue beyond the term of legal custody to which the offender was sentenced.

Stat. Auth.: ORS 179.040, 179.473, 179.475, 420.500 & 420.505
Stats. Implemented: ORS 179.040, 179.473, 179.475, 420.500 & 420.505
Hist.: MHD 8-2005(Temp), f. & cert. ef. 7-15-05 thru 1-7-06; MHD 9-2005, f. 12-28-05, cert. ef. 1-1-06

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Adm. Order No.: MHD 10-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Adopted: 309-120-0210, 309-120-0215, 309-120-0220, 309-120-0225, 309-120-0230, 309-120-0235, 309-120-0240, 309-120-0245, 309-120-0250, 309-120-0255, 309-120-0260, 309-120-0265
Rules Repealed: 309-120-0015, 309-120-0020, 309-120-0000(T), 309-120-0005(T), 309-120-0021(T)
Rules Ren. & Amend: 309-120-0000 to 309-120-0200, 309-120-0005 to 309-120-0205, 309-120-0030 to 309-120-0270, 309-120-0035 to 309-120-0275, 309-120-0040 to 309-120-0280, 309-120-0045 to 309-120-0285, 309-120-0050 to 309-120-0290, 309-120-0055 to 309-120-0295
Subject: The Department of Human Services (DHS), Office of Mental Health and Addiction Services is permanently adopting rules relating to the Oregon Department of Corrections (ODOC) Mental Health Treatment Programs. These rules are necessary in order to implement 2005 Oregon Laws, Chapter 439 (HB 2141) relating to the assignment and transfer of ODOC inmates to a state mental hospital listed in ORS 426.010 for evaluation and treatment. Other nonsubstantive housekeeping revisions were made to update terminology and correct statute references.
Rules Coordinator: Diana Nerby—(503) 947-1186

309-120-0200
Purpose

Purpose. These rules prescribe procedures by which inmates of Department of Corrections facilities may be transferred to a state mental hospital listed in ORS 426.010.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83, Renumbered from 309-023-0010(1) and (2); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; MHD 7-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06; Renumbered from 309-120-0000, MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0205
Definitions

As used in these rules:

(1) "Department of Corrections Facility" means any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) "Inmate" means any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(3) "Mentally Ill Inmate" means an inmate who, because of a mental disorder, is one or more of the following:

(a) Dangerous to self or others.

(b) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(c) An inmate who:

(A) Is chronically mentally ill, as defined in ORS 426.495;

(B) Within the previous three years, has twice been placed in a hospital or approved inpatient facility by the Department of Human Services under ORS 426.060;

(C) Is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in subparagraph (3)(c)(B) of this rule; and

(D) Unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the inmate will become a person described under either or both subparagraph (3)(c)(A) or (3)(c)(B) of this rule.

(4) "State Mental Hospital" as defined in ORS 426.010. Except as otherwise ordered by the Department of Human Services pursuant to ORS 179.325, the Oregon State Hospital in Salem, Marion County, and the Blue Mountain Recovery Center in Pendleton, Umatilla County, shall be used as state hospitals for the care and treatment of mentally ill persons who are

assigned to the care of such institutions by the Department of Human Services or who have previously been committed to such institutions.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83, Renumbered from 309-023-0010(3); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; MHD 7-2005(Temp), f. & cert. ef. 7-7-05 thru 1-3-06; Renumbered from 309-120-0005, MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0210
Administrative Transfers (Mentally Ill Inmates)

(l) The Administrator of the Department of Corrections Counseling and Treatment Services Unit/designee may request the Superintendent/designee of a state mental hospital listed in ORS 426.010 to accept a transfer of a mentally ill inmate to a state mental hospital pursuant to these rules.

(2) An inmate may be transferred to a state mental hospital for stabilization and evaluation for mental health treatment for a period not to exceed 30 days unless the transfer is extended pursuant to a hearing conducted in accordance with these rules.

(3) If space is available and the Superintendent/designee of the state mental hospital approves, the inmate shall be transferred.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0215
Hearings Process

(1) The Department of Human Services shall provide for an administrative commitment hearing conducted by a hearings officer employed or under contract with the Department of Corrections for administrative commitment or extension of the transfer of the inmate if:

(a) The Department of Human Services determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the Department of Human Services needs more than 30 days to stabilize or evaluate the inmate; and

(b) The inmate does not consent to the administrative commitment or an extension of the transfer.

(c) Inmates in the legal custody of the Department of Corrections and in the physical custody of the Oregon Youth Authority (OYA) will be administratively committed through an OYA hearing, pursuant to OAR 416-425-0020. Inmates in OYA physical custody will be transferred directly from an OYA facility to a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the Department of Human Services and returned directly to the OYA facility.

(2) It is the responsibility of the Superintendent/designee of the Oregon State Hospital to notify the hearings officer of the need for a hearing and to provide him or her with a transfer request containing the evidence justifying such action.

(3) The hearing shall be conducted by an independent hearing officer.

(4) The hearings officer shall not have participated in any previous way in the assessment process.

(5) The hearings officer may pose questions during the hearing.

(6) The evidence considered by the hearings officer will be of such reliability as would be considered by reasonable persons in the conduct of their serious affairs.

(7) When confidential informant testimony is submitted to the hearings officer, the identity of the informant and the verbatim statement of the informant shall be revealed to the hearings officer in writing, but shall remain confidential.

(8) In order for the hearings officer to rely on the testimony of a confidential informant, information must be submitted to the hearings officer from which the hearings officer can find that the informant is a person who can be believed or that the information provided in the case at issue is truthful.

(9) At the conclusion of the hearing, the hearings officer will deliberate and determine whether by clear and convincing evidence that the inmate is a mentally ill person as defined in ORS 426.005 and will be administratively committed involuntarily to a state mental hospital. The hearings officer may postpone the rendering of a decision for a reasonable period of time, not to exceed three (3) working days from the date of the hearing, for the purpose of reviewing the evidence.

(10) An inmate subject to an administrative commitment to a state mental hospital has the rights to which persons are entitled under ORS 179.485.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0220
Representation

(1) In all cases, the inmate is entitled to:

(a) Speak in his or her own behalf; and

(b) Be present at all stages of the hearings process, except when the hearings officer finds that to have the inmate present would present an immediate threat to facility security or safety of its staff or others. The reason(s) for the finding shall be part of the record.

(2) Assistance by a qualified and independent person approved by the hearings officer will be ordered upon a finding that assistance is necessary based upon the inmate's financial inability to provide an assistant, language barriers, or competence and capacity of the inmate to prepare a defense, to understand the proceedings, or to understand the rights available to him or her. An inmate subject to an administrative commitment hearing may not receive assistance from another inmate.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0225
Notice of Hearing

(1) The inmate shall be given written notice that an administrative commitment to a state mental hospital listed in ORS 426.010, a hospital or facility designated by the Department of Human Services, or an extension of the transfer is being considered by the Department of Corrections and the Department of Human Services.

(2) The notice will be provided by the hearings officer. Such notice must be provided far enough in advance of the hearing to permit the inmate to prepare for the hearing, but in no case shall notice be provided less than 24 hours prior to the hearing. The hearing shall take place no later than five (5) days from the date of service of the notice.

(3) The notice shall include a copy of this rule.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0230
Investigation

(1) The inmate may request that an investigation be conducted. If an investigation is ordered, a designee of the hearings officer shall conduct the investigation. No person shall serve as an investigator who has participated in any previous way in the process.

(2) An investigation shall be conducted upon the inmate's request, if an investigation will assist in the resolution of the proceedings and the information sought is within the ability of the facility to procure or the inmate to provide with his or her own resources.

(3) The hearings officer may order an investigation on his or her own motion.

(4) The hearings officer shall allow the inmate access to the results of the investigation unless disclosure of the investigative results would constitute a threat to the safety and security of the facility, its staff or others, or to the orderly operation of the facility.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0235
Documents/Reports

(1) An inmate may present documents or reports during the hearing, subject to the exclusion and restrictions provided in these rules.

(2) The reporting employee or other agents of the Department of Corrections or Department of Human Services who are knowledgeable may submit to the hearings officer documents or reports in advance of the hearing that are being relied upon for the administrative commitment or extension of the transfer. Such evidence must be disclosed to the inmate during the hearing.

(3) The hearings officer may exclude documents or other evidence upon finding that such evidence would not assist in the resolution of the proceeding, or that such evidence would present an undue risk to the safety, security, and orderly operation of the facility. The reason(s) for exclusion shall be made part of the record.

(4) Notwithstanding subsection (2) of this rule, the hearings officer may classify documents or other evidence as confidential, and not disclose such evidence to the inmate, upon finding that disclosure of psychiatric or psychological information would constitute a danger to another individual, compromise the privacy of a confidential source, or would constitute an immediate and grave detriment to the treatment of the individual, if medically contraindicated by the treating physician or a licensed health care

professional in the written account of the inmate. The reason(s) for classifying documents or other evidence as confidential shall be made part of the record.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0240
Witnesses

(1) The hearings officer shall direct the scheduling and taking of testimony of witnesses at the hearing. Witnesses may include inmates, employees, or other persons. Testimony may be taken in person, by telephone, or by written report or statement.

(2) Except as provided in this subsection, a hearings officer must provide an inmate or his or her representative with the opportunity to call witnesses to testify before the hearings officer and to confront and cross-examine witnesses called by the state. The hearings officer may deny the opportunity provided in this rule upon a finding of good cause. Good cause includes, but is not limited to, an undue risk to the safety, security, or orderly operation of the facility or an immediate and grave detriment to the treatment of the individual due to disclosure of psychiatric or psychological information, if medically contraindicated by the treating physician or a licensed health care professional. The reason(s) for any denial of the opportunity to call witnesses or confront and cross-examine witnesses shall be made part of the record.

(3) If the inmate intends to call witnesses, the inmate must request that the hearings officer schedule witnesses to present testimony at the hearing. The request must be submitted to the hearings officer in writing in advance of the hearing, and include a list of the person(s) the inmate requests to be called to testify and direct examination questions to be posed to each person. The hearings officer shall arrange for the taking of testimony from such witnesses as properly requested by the inmate, subject to the exclusions and restrictions provided in these rules. The hearings officer, rather than the inmate, shall pose questions submitted by the inmate, including questions on cross-examination, if any. The hearings officer may briefly recess the hearing to allow the inmate, the inmate's assistant, or both, an opportunity to prepare cross-examination questions.

(4) The hearings officer may limit testimony when it is cumulative or irrelevant.

(5) All questions which may assist in the resolution of the proceedings, as determined by the hearings officer, shall be posed. The reason(s) for not posing a question will be made part of the record.

(6) The hearings officer may, on his or her own motion, call witnesses to testify.

(7) The hearings officer may exclude a specific inmate or staff witness upon finding that the witness' testimony would not assist in the resolution of the proceeding or presents an immediate undue hazard to facility security. If a witness is excluded, the reason(s) shall be made part of the record.

(8) The hearings officer may exclude other persons as witnesses, after giving reasonable consideration to alternatives available for obtaining witness testimony, upon finding that the witness' testimony would not assist the hearings officer in the resolution of the proceeding, the witness' appearance at the hearing would present an undue risk to the safety, security, or orderly operation of the facility or the safety of the witness or others, or that the witness is not reasonably available. The reason(s) for exclusion shall be made part of the record.

(9) Persons other than staff requested as witnesses may refuse to appear or testify.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0245
Postponement

(1) A hearing may be postponed by the hearings officer for good cause and for reasonable periods of time.

(2) Good cause includes, but is not limited to:

(a) Illness or unavailability of the inmate;

(b) Gathering of additional evidence; or

(c) Gathering of additional documentation.

(3) The reason(s) for the postponement shall be made part of the record.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0250
Findings

(1) No Justification: The hearings officer may find that the evidence does not support placement in a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the Department of Human Services, in which case the hearings officer will recommend that the inmate return to his or her former status with all rights and privileges of that status. The hearing record shall be processed with final action subject to review by the Superintendent/designee of the Oregon State Hospital. The findings must be on the merits. Technical or clerical errors in the writing or processing of the transfer request, or both, shall not be grounds for a no justification finding, unless there is substantial prejudice to the inmate.

(2) Justification: The hearings officer may find the evidence supports the inmate's placement in a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the Department of Human Services, in which case the hearings officer will so inform the inmate and recommend that the inmate's administrative commitment exceed 30 days. The hearing record shall be processed with final action subject to review by the Superintendent/designee of the Oregon State Hospital. An inmate's administrative commitment to a state mental hospital shall not exceed 180 days unless the commitment is renewed in a subsequent administrative hearing in accordance with these rules.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0255
Hearing Record

(1) Upon completion of a hearing, the hearings officer shall prepare and cause to be delivered to the Superintendent/designee of the Oregon State Hospital a hearing record within three (3) days from the date of the hearing.

(2) The record of the formal hearing shall include:

(a) Examination reports;

(b) Notice of hearing and rights;

(c) Recording of hearing;

(d) Supporting material(s); and

(e) "Findings-of-Facts, Conclusions, and Recommendation" of the hearings officer.

(3) The hearings officer will retain the recording and forward to the Superintendent/designee of the Oregon State Hospital items (2)(a), (2)(b), (2)(d), and (2)(e) of this rule.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0260
Superintendent's Review

(1) The results of any hearing held to place an inmate in a state mental hospital for administrative commitment will be reviewed and approved by the Superintendent/designee of the Oregon State Hospital .

(2) The Superintendent/designee of the Oregon State Hospital shall review the "Findings-of-Fact, Conclusions, and Recommendation" of the hearings officer, in terms of the following factors:

(a) Was there substantial compliance with this rule;

(b) Was the decision based on substantial information; and

(c) Was the decision proportionate to the information and consistent with the provisions of this rule.

(3) Within three (3) days of the receipt of the hearings officer's report, the Superintendent/designee of the Oregon State Hospital shall enter an "order," which may:

(a) Affirm the recommendation;

(b) Modify the recommendation;

(c) Reverse the recommendation; or

(d) Reopen the hearing for the introduction and consideration of additional evidence.

(4) When the Superintendent/designee of the Oregon State Hospital takes action to modify or reverse, he or she must state the reason(s) in writing and immediately notify the inmate, hearings officer, and Administrator for Counseling and Treatment Services.

(5) When the Superintendent/designee of the Oregon State Hospital reopens the hearing under this rule, the hearings officer shall, pursuant to these rules, conduct the reopened hearing and prepare an amended hearing record within three (3) days of the reopened hearing. The Superintendent/designee of the Oregon State Hospital shall review the hearing officer's recommendation and enter an amended "order," which may affirm, modify, or reverse the hearing officer's recommendation.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.

Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0265
Extension of Transfer

(1) If the Department of Human Services determines that the administrative commitment must exceed 180 days in order to stabilize the inmate, the administrative commitment must be renewed in a subsequent administrative commitment hearing held in accordance with these rules.

(2) Notwithstanding this rule, an administrative commitment may not continue beyond the term of incarceration to which the inmate was sentenced.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0270
Handling of Inmate Money and Personal Property

(1) When an inmate is transferred to a state mental hospital, the Department of Corrections shall send a check for the balance of the inmate's account to the business office of the state mental hospital.

(2) The inmate's personal property will be transferred from the Department of Corrections facility in accordance with standards and limitations set by the state mental hospital to which the inmate is transferred.

(3) When the inmate is returned to a Department of Corrections facility, the inmate's money and personal property, as allowed by the Department of Corrections Rules for Personal Property (Inmate) (OAR 291-117) and Trust Accounts (Inmate) (OAR 291-158), will be returned with the inmate. All property not allowed under the Department of Corrections rules for Personal Property (Inmate) shall be handled, controlled and disposed of in accordance with Department of Human Services rules (OAR 309-108-0000 through 309-108-0020).

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83, Renumbered from 309-023-0010(5); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; Renumbered from 309-120-0030, MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0275
Visiting Privileges

(1) When an inmate is transferred to a state mental hospital, the Department of Corrections facility shall provide a copy of the inmate's approved list of visitors.

(2) All visitors shall be approved according to the state mental hospital's procedure.

(3) When an inmate is returned to a Department of Corrections facility, any new names added to the list will be subject to review and approval according to the Department of Corrections Rule on Visiting (Inmate) (OAR 291-127) before admission of new visitors will be allowed.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83, Renumbered from 309-023-0010(5); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; Renumbered from 309-120-0035, MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0280
Short-Term Transitional Leaves, Emergency Leaves and Supervised Trips

When an inmate is administratively transferred to a state mental hospital, no short-term transitional leaves, emergency leaves, or supervised trips shall be approved by the state mental hospital without approval of the functional unit manager of the Department of Corrections facility.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83, Renumbered from 309-023-0010(6); MHD 1-2000, f. & cert. ef. 1-24-00; Renumbered from 309-120-0040, MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0285
Releases from a State Mental Hospital

An inmate who is transferred to a state mental hospital may be discharged and transferred back to a Department of Corrections facility for one of the following reasons:

(1) Completion of treatment;

(2) He/she could receive mental health services within the Department of Corrections, and there was a mutually agreed upon continuity of care plan developed by the state mental hospital and the Administrator of the Department of Corrections Counseling and Treatment Services Unit/designee; or

(3) He/she does not meet the requirements to continue treatment at a state mental hospital.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83, Renumbered from 309-023-0010(7); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; Renumbered from 309-120-0045, MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0290
Reporting of Unusual Incidents

Reporting of unusual incidents involving inmates administratively transferred to a state mental hospital shall be handled in accordance with the Department of Corrections policy on Unusual Incident Reporting Process.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83, Renumbered from 309-023-0010(8); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; Renumbered from 309-120-0050, MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

309-120-0295
Confidentiality and Sharing of Information

(1) Department of Corrections records and other inmate information shall not be available to inmates or persons not employed by, nor under contract to, the Department of Human Services.

(2) Department of Human Services records and information will be handled in accordance with ORS 179.495, 179.505, 192.501, 192.502, 192.505 and 42 CFR Part 2 relating to confidentiality of medical treatment records.

Stat. Auth.: ORS 179.040, 179.473, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439.
Stats. Implemented: ORS 179.040, 179.473, 179.475, 179.478, 179.479, 179.495, 179.505, 2005 OL, Ch. 439
Hist.: MHD 43, f. & ef. 11-5-76; MHD 5-1979, f. & ef. 8-14-79; MHD 12-1979(Temp), f. & ef. 11-21-79; MHD 3-1980, f. & ef. 4-1-80; MHD 1-1981, f. & ef. 6-5-81; MHD 1-1983(Temp), f. & ef. 1-5-83; MHD 8-1983, f. & ef. 4-1-83, Renumbered from 309-023-0010(9); MHD 3-1995, f. & cert. ef. 4-13-95; MHD 1-2000, f. & cert. ef. 1-24-00; Renumbered from 309-120-0055, MHD 10-2005, f. 12-29-05, cert. ef. 1-1-06

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Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 18-2005
Filed with Sec. of State: 12-30-2005
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Notice Publication Date: 12-1-05
Rules Adopted: 333-008-0025, 333-008-0110, 333-008-0120
Rules Amended: 333-008-0000, 333-008-0010, 333-008-0020, 333-008-0030, 333-008-0040, 333-008-0050, 333-008-0060, 333-008-0070, 333-008-0080, 333-008-0090
Subject: Permanently adopts changes in Oregon Administrative Rules, pursuant to Senate Bill 1085, for the Oregon Medical Marijuana Program.
Rules Coordinator: Christina Hartman—(971) 673-1291

333-008-0000
Description of the Oregon Medical Marijuana Act

The Oregon Medical Marijuana Act was adopted by voters in the November 3, 1998 general election (Ballot Measure 67). The Act was amended by House Bill 3052, passed during the 1999 legislative session, and amended again by SB 1085, passed during the 2005 legislative session (Oregon Laws 2005, Chapter 882). The statutes governing the Oregon Medical Marijuana Program are ORS 475.300 – 475.346. The Oregon Department of Human Services was assigned rule-making authority necessary for the implementation and administration of the Oregon Medical Marijuana Act. The Act intends:

(1) To allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to receive the benefit of their doctor's professional advice regarding the possible risks and benefits of medical marijuana;

(2) To allow Oregonians suffering from debilitating medical conditions to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them; and

(3) To make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for non-medical purposes.

Stat. Auth.: ORS 475.300
Stats. Implemented: ORS 475.300
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0010
Definitions

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

(1) "Act" means the Oregon Medical Marijuana Act.

(2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Department.

(3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS Chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(4) "Debilitating medical condition" means:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, agitation due to Alzheimer's disease, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(i) Cachexia;

(ii) Severe pain;

(iii) Severe nausea;

(iv) Seizures, including but not limited to seizures caused by epilepsy; or

(v) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

(c) Any other medical condition or treatment for a medical condition adopted by the Department by rule or approved by the Department pursuant to a petition submitted under OAR 333-008-0090.

(5) "Delivery" means:

(a) The actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship; and

(b) A transfer from one patient to another patient of useable marijuana, seeds, or live plants does not constitute delivery if the amount transferred is within the limits established in ORS 475.300 to 475.346.

(6) "Department" means the Oregon Department of Human Services.

(7) "Designated primary caregiver" means an individual eighteen (18) years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Department. "Designated primary caregiver" does not include the person's attending physician. Each patient may have only one designated primary caregiver at any given time.

(8) "Grow site registration card" means the card issued to the patient and displayed at the grow site.

(9) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(10) "Mature plant" means a marijuana plant that does not fall within the definition of a seedling or a start.

(11) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(12) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Department under ORS Chapter 414.

(13) "Oregon Medical Marijuana Program identity card" means a wallet-sized card issued by the Department in addition to the official registration card that designates a person as a patient, primary caregiver, or person responsible for a marijuana grow site.

(14) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under eighteen (18) years of age.

(15) "Patient" has the same meaning as "registry identification cardholder."

(16) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Department for this purpose.

(17) "Primary responsibility" for the purposes of being an attending physician means:

(a) That the physician:

(A) Provides primary health care to the patient; or

(B) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(C) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS Chapter 677, the patient's Physician Assistant licensed under ORS Chapter 677, or the patient's Nurse Practitioner licensed under ORS Chapter 678; and,

(b) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(18) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(19) "Registry identification card" means a document issued by the Department that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(20) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a patient registry identification card by the Department.

(21) "Seedling or start" means a marijuana plant that has no flowers and is less than twelve (12) inches in height and less than twelve (12) inches in diameter. A seedling or start must meet all three (3) criteria set forth above or it will be considered a mature plant.

(22) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(23) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(24) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.005, 677.010, 475.302 & 475.309(3)
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0020
New Registration Application and Verification

(1) A person may apply for a registry identification card on a form prescribed by the Department. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form, signed and dated by the applicant;

(b) Copies of legible photographic identification from the applicant, the designated primary caregiver, and person responsible for a marijuana grow site, as applicable. The following are acceptable forms of identification:

(A) Oregon Driver's License;

(B) Oregon Identification Card with photo;

(C) Voter Registration Card with photo; or

(D) If a caregiver, a military photo identification card;

(c) Documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within ninety (90) days of the date of receipt by the Department, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) A completed "Declaration of Person Responsible for Minor" form for any person under eighteen (18) years of age, signed and dated by the person responsible for the minor; and

(e) An application fee in the form of cash, bank check, or personal check. The Department will place a ten (10) day hold on the issuance of a registry identification card for an application accompanied by a personal check. An applicant will be given fourteen (14) days from Department receipt of non-sufficient funds (NSF) or stop payment notification to submit payment in the form of a bank check or cash.

(2) Optional information may be added to application forms at the discretion of the Department if such information serves the best interest of the registry identification cardholder and assists agencies in the implementation of the Act. Optional information need not be provided by the registry identification cardholder or attending physician and failure to provide optional information will have no bearing on the approval or denial of a registry identification card.

(3) For applications received on or after December 1, 2005, the fee for a new application is $100.00 (one hundred dollars), unless an applicant can demonstrate current eligibility in the Oregon Health Plan (OHP), or receipt of current Supplemental Security Income (SSI) benefits, in which case the application fee is $20.00 (twenty dollars).

(a) To qualify for a reduced fee on the basis of current eligibility in the OHP, an applicant must provide a copy of the applicant's current eligibility statement.

(b) To qualify for a reduced fee on the basis of receipt of current SSI benefits, an applicant must provide a copy of a current monthly SSI benefit card, showing dates of coverage.

(4) The Department may verify information on each application and accompanying documentation, including:

(a) Contacting each applicant by telephone or by mail. If proof of identity is uncertain the Department may require a face-to-face meeting and may require the production of additional identification materials;

(b) Contacting a minor's parent or legal guardian;

(c) Contacting the Oregon Board of Medical Examiners to verify that an attending physician is licensed to practice in the state and is in good standing;

(d) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Department will notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application;

(e) Contacting the OHP or Social Security Administration (SSA) to verify eligibility for benefits; and

(f) Running a criminal background check to determine whether a person responsible for a marijuana grow site has been convicted of a violation described in Oregon Laws 2005, Chapter 882, Section 8(6).

(5) The Department will notify an applicant who submits a reduced fee for which the patient is not eligible and will give the patient fourteen (14) days from the date of notice to pay the correct fee, submit a current, valid eligibility determination statement for the OHP, or to submit a copy of a receipt for current SSI monthly benefit, as applicable. The Department will not suspend processing of the applicant's application pending receipt of an eligibility statement. The Department will not grant an application fee refund for any eligibility determination made on or after the date of issuance of the applicant's registry identification card.

(6) If an applicant does not provide all the information required and the application is considered incomplete, the Department shall notify the applicant of the information that is missing, and shall give the applicant fourteen (14) days to submit the missing information.

(7) If the Department is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed thirty (30) days to submit written documentation and/or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030.

(8) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsection (6) of this rule, the application will be returned to the applicant as incomplete, along with the application fee. An applicant whose application is returned as incomplete may reapply at any time.

(9) The application forms referenced in this rule may be obtained by contacting the: Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or calling 971-673-1226.

Stat. Auth.: ORS 475.309 & 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05; PH 17-2005, f. 11-25-05, cert. ef. 12-1-05; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0025
Marijuana Grow Site Registration

(1) A patient must register a marijuana grow site with the Department. The Department will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Department an application, prescribed by the Department, that includes:

(a) The name of the person responsible for the marijuana grow site;

(b) The date of birth of the person responsible for the marijuana grow site;

(c) The physical address of the marijuana grow site where marijuana is to be produced;

(d) The mailing address of the person responsible for the marijuana grow site;

(e) The registry identification card number of the registry identification cardholder, if known, for whom the marijuana is being produced; and

(f) Any other information the Department deems necessary.

(3) The Department will conduct a criminal background check on the person identified as being responsible for the grow site.

(a) If a patient is convicted of a violation of ORS 475.992(1)(a) or (b) that occurred on or after January 1, 2006, the patient is prohibited, for a period of five (5) years from the date of conviction, from producing marijuana at a location where the patient is present. The patient will be informed by registered mail if he or she is disqualified from being the person responsible for a grow site and the patient will be given the opportunity to identify another person responsible for the grow site.

(b) If a designated primary caregiver or a third party identified as the person responsible for the grow site is convicted of a violation of ORS 475.992(1)(a) or (b) that occurred on or after January 1, 2006, that person is prohibited, for a period of five (5) years from the date of conviction, from being a person responsible for a grow site. The patient will be informed by registered mail if the designated primary caregiver or third party identified as the person responsible for a grow site is disqualified from being the person responsible for a grow site and the patient will be given the opportunity to identify another person responsible for the grow site.

(c) If a designated primary caregiver or a third party identified as the person responsible for the grow site is convicted more than once of a violation of ORS 475.992(1)(a) or (b) that occurred on or after January 1, 2006, the patient will be informed by registered mail that the person is permanently prohibited from being a person responsible for a grow site and cannot be issued a marijuana grow site registration card. The patient will be given the opportunity to identify another person responsible for the grow site.

(4) The Department will issue a marijuana grow site registration card to a patient who has met the requirements of subsection (2) of this rule, unless the person responsible for a grow site is disqualified under subsection (3) of this rule.

(5) A person responsible for a marijuana grow site must display a marijuana grow site registration card for each patient for which marijuana is being produced, at the marijuana grow site at all times.

(6) All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site, are the property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.

(7) All marijuana produced for a patient must be provided to the patient or primary designated caregiver when the person responsible for a marijuana grow site ceases producing marijuana for the patient.

(8) A person responsible for a marijuana grow site must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the person responsible for a marijuana grow site ceases producing marijuana for the patient.

(9) A patient or the designated primary caregiver of the patient may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.

(10) If marijuana used by a patient is to be produced at a grow site where the patient or designated caregiver is not present, the person responsible for the grow site may only produce marijuana for up to four (4) patients or designated primary caregivers at any time. A patient or desig-

nated caregiver will be considered to be "present" at a grow site if the patient or designated caregiver has their primary residence at the grow site. For purposes of this section, a "primary residence" is the physical location where a person lives, during any 12-month period, more than he or she lives elsewhere during that period.

Stat.Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 - 475.346
Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0030
Registration Approval and Denial

(1) The Department will approve or deny an application within thirty (30) days of receiving a complete application, including payment of the designated fee.

(2) If the Department approves the application, the Department shall issue a serially numbered registry identification card to the patient within five (5) business days. The registry identification card shall include the following information:

(a) The patient's name, address and date of birth (DOB);

(b) The effective date, date of issuance and expiration date of the registry identification card;

(c) The designated primary caregiver's name, address, and date of birth (DOB), if applicable;

(d) The name, address, and date of birth (DOB) of the person responsible for a marijuana grow site, if applicable;

(e) The location where the marijuana is produced; and

(f) Such other optional information as the Department may specify.

(3) When the patient, to whom the Department has issued a registry identification card, pursuant to this section, has specified a designated primary caregiver, or a person responsible for a marijuana grow site, the Department shall issue an Oregon Medical Marijuana Program identity card for the designated primary caregiver and the person responsible for the grow site. The Department shall also issue a grow site registration card to the patient. All cards shall contain the information specified in subsection (2) of this rule, as appropriate.

(4) The Department may deny an application if:

(a) The applicant did not provide the information required as provided in ORS 475.309 to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition; or

(b) The Department determines that the information provided was falsified.

(5) If the Department denies an application, the Department shall send the applicant a denial letter within thirty (30) days of receipt of the complete application. The time period set forth in OAR 333-008-0020 that provides an applicant an opportunity to supplement an incomplete application does not count towards the thirty (30) day deadline for processing an application. The denial letter will be sent by certified, first-class mail to the address listed on the application form. The letter will state the reason(s) for denial and when the applicant may reapply.

(6) Denial of a registry identification card shall be considered a final Department action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of eighteen (18) years of age whose application has been denied, the person's parent or legal guardian shall have standing to contest the Department's action.

(7) Any person whose application has been denied may not reapply for six (6) months from the date of the denial, unless so authorized by the Department or a court of competent jurisdiction.

Stat. Auth.: ORS 475.309 & 475.316
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; OHD 21-2001(Temp), f. & cert. ef. 10-12-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 12-2004(Temp), f. & cert. ef. 4-1-04 thru 8-2-04; Administrative correction 8-19-04; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0040
Annual Renewal and Interim Changes

(1) A patient shall register on an annual basis to maintain active registration status by submitting a renewal application prescribed by the Department.

(2) Between sixty (60) to ninety (90) calendar days prior to expiration, the Department shall mail to the patient's address of record, a letter notifying the patient of the upcoming expiration date, along with a renewal application.

(3) In addition to completing the renewal application, the patient must submit, prior to the expiration of the registry identification card:

(a) Written documentation, signed by the patient's attending physician, reconfirming the patient's debilitating medical condition;

(b) A copy of the patient's current, valid Oregon Health Plan (OHP) eligibility determination statement or a copy of a current monthly Supplemental Security Income (SSI) benefit card, showing dates of coverage, if applicable;

(c) The name of the patient's designated primary caregiver, if a primary caregiver has been designated for the upcoming year;

(d) The name of the person responsible for the marijuana grow site; and

(e) Confirmation that existing application information has not changed.

(4) If the renewal information is not received by the expiration date on the registry identification card, the patient's registry identification card and all other associated Oregon Medical Marijuana Program cards, if any will be deemed expired. The expiration date may be extended, due to personal hardship, at the discretion of the Department. If a person fails to apply for renewal within the time period specified in this rule, that person must submit a new application.

(5) A patient must notify the Department within thirty (30) calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, person responsible for a marijuana grow site or grow site address.

(6) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition shall return the registry identification card to the Department within seven (7) calendar days of notification of the diagnosis. A designated primary caregiver and person responsible for a marijuana grow site shall return their Oregon Medical Marijuana Program registry card(s) within the same period of time.

(7) For renewal applications received on or after December 1, 2005, the renewal fee is $100.00 (one hundred dollars), unless an applicant can demonstrate current eligibility in the Oregon Health Plan (OHP) or receipt of current Supplemental Security Income (SSI) benefits, in which case the fee is $20.00 as set forth in OAR 333-008-0020(3).

(8) The Department will verify the renewal application information in the same manner as specified in OAR 333-008-0020(4).

Stat. Auth.: ORS 475.309 & 475.312
Stats. Implemented: ORS 475.309 & 475.312
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0050
Confidentiality

(1) The Department shall create and maintain both paper and computer data files of patients, designated caregivers, persons responsible for a grow site, and grow site addresses. The data files will include all information collected on the application forms or equivalent information from other written documentation, plus a copy of Oregon Medical Marijuana Program registry card(s), effective date, date of issue, and expiration date. Except as provided in subsection (2) of this rule, the names and identifying information of registry identification cardholders and the name and identifying information of a pending applicant for a card, a designated primary caregiver, and a person responsible for a grow site, and a marijuana grow site location, shall be confidential and not subject to public disclosure.

(2) Names and other identifying information made confidential under subsection (1) of this rule may be released to:

(a) Authorized employees of the Department as necessary to perform official duties of the Department, including the production of any reports of aggregate (i.e., non-identifying) data or statistics;

(b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify that a person:

(A) Is or was a lawful possessor of a registry identification card; or

(B) That the address is or was a documented grow site; or

(C) To supply optional information provided on the application forms; or

(D) As provided in OAR 333-008-0060(2);

(c) Other persons (such as, but not limited to, employers, lawyers, family members, other government officials) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or person responsible for a marijuana grow site. The release of information must specify what information the Department is authorized to release and to whom.

Stat. Auth.: ORS 475.331
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0060
Monitoring and Investigations

(1) The Department may, at any time, contact a registry identification cardholder or a patient's attending physician by telephone, mail or in person to verify the current accuracy of information included in the registration system. This authority does not extend to allowing Department staff to routinely search the person or property of a person who possesses a registry identification card or to search the property of an attending physician.

(2) Notwithstanding (1) above, the Department may, when it has reason to believe a violation of ORS 475.300 to 475.346 has occurred, either conduct an investigation to collect evidence of a violation of the Oregon Medical Marijuana Act, or arrange for this responsibility to be assumed by the proper state or local authorities. Such violations include, but are not limited to:

(a) Failure by a patient to notify the Department of any change in the patient's name, address, attending physician, designated primary caregiver, person responsible for a marijuana grow site, or grow site location.

(b) Failure by a patient, designated primary caregiver, or person responsible for a marijuana grow site to return the Oregon Medical Marijuana Program identity and official registration card(s) to the Department within seven (7) calendar days of the patient's notification of the diagnosis that the patient no longer has a debilitating medical condition.

(c) Failure by a designated primary caregiver or person responsible for a marijuana grow site to return the Oregon Medical Marijuana Program identity and official registration card(s) to the Department within seven (7) calendar days of notification by the patient that the person's designation as primary caregiver or person responsible for a marijuana grow site has been terminated.

(d) Submission of false information by a patient, designated primary caregiver, person responsible for a marijuana grow site, or attending physician during the registration or registration renewal process.

(e) Conviction of a patient, designated primary caregiver, or person responsible for a marijuana grow site of a marijuana-related offense that occurred after the date of issuance of a registry identification card.

(3) If the Department has reason to believe that an individual, signing an application as the attending physician, does not meet the definition of attending physician under these rules, the Department may examine the original patient medical record in the physician's possession or a copy provided by the physician. The sole purpose of this examination is to determine whether the physician meets the definition of attending physician in OAR 333-008-0010 and does not include review of any clinical judgments such as adequacy of diagnosis or propriety of treatment. The Department will send written notification allowing the physician ten (10) days to provide additional information requested by the Department, a copy of the patient's medical record, or the original medical record for Department review.

(4) In determining whether to examine a patient's medical record pursuant to subsection (3) of this rule, the Department may consider, but is not limited to, factors such as complaints from patients or family members, complaints from health care providers, total number of applicants for whom the physician provided documentation, and/or number of applicants for whom the physician provided documentation during a specific time period.

(5) The Department will notify the patient of the intent to review the medical records pursuant to subsection (3) of this rule and request the patient's authorization to conduct the review. A patient's failure to authorize a review of his or her medical records for investigation purposes may result in suspension or expiration of the patient's registry identification card.

(6) At any time, the attending physician may notify the Department that the patient's condition no longer warrants the use of medical marijuana. The Department shall then request that the physician notify the patient of the contact, and the patient must return the registry identification card.

(7) The Department shall refer criminal complaints against registry identification cardholders, designated primary caregivers, or persons responsible for marijuana grow sites; or medical practice complaints against attending physicians to the appropriate state or local authorities.

Stat. Auth.: ORS 475.309
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0070
Suspensions

(1)(a) In accordance with provisions of these rules, the Department may, in its discretion suspend a registry identification card, and preclude a person from using a registry identification card for a period of up to six (6) months, when the Department obtains evidence that establishes a registry identification cardholder:

(A) Has committed egregious violations of the Act, including obtaining a registry identification card by fraud;

(B) Has committed multiple and/or continuing violations of the Act; or

(C) Has been convicted of a marijuana-related offense.

(b) The Department will send written notification of the action by certified, first-class mail. The notice shall contain the information required under ORS 183.415.

(2) A patient may contest the proposed suspension of a registry identification card by submitting a request for a hearing in writing. The request for hearing shall be addressed to: State Public Health Officer, Public Health, Department of Human Services, 800 NE Oregon Street, Portland, Oregon 97232-2162, and must be received within twenty-one (21) days of receipt of notice of the proposed action.

(3) The Department may, at its discretion, reinstate a registry identification card without re-application. However, if the registry identification card was obtained by fraudulent means, the Department may require the person to re-apply.

Stat. Auth.: ORS 475.316
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0080
Permissible Amounts of Medical Marijuana

(1) If the marijuana used by a patient is produced at a location where the patient or designated primary caregiver is present, a patient or the patient's designated primary caregiver may possess up to six (6) mature marijuana plants and twenty-four (24) ounces of usable marijuana. A patient and the patient's designated primary caregiver may possess a combined total of up to eighteen (18) marijuana seedlings or starts.

(2) Notwithstanding subsections (1) of this rule, if a patient is convicted on or after January 1, 2006 of violating ORS 475.992(1)(a) or (b), the patient or the designated primary caregiver may possess only one (1) ounce of usable marijuana at any given time for a period of five (5) years from the date of the conviction.

(3) If the marijuana used by a patient is produced at a marijuana grow site, where the patient or designated primary caregiver is not present, the person responsible for the marijuana grow site:

(a) May produce marijuana for and provide marijuana to a patient or that person's designated primary caregiver as authorized under ORS 475.300 to 475.346 and these rules;

(b) May possess up to six (6) mature plants and up to twenty-four (24) ounces of usable marijuana for each patient for which marijuana is being produced;

(c) May possess up to eighteen (18) marijuana seedlings or starts for each patient for which marijuana is being produced;

(d) May produce marijuana for up to four (4) patients, but may never grow for more than four (4) patients at any given time;

(4) Except as provided in subsection (2) of this rule, a patient, the designated primary caregiver for a patient and the person responsible for a marijuana grow site producing marijuana for the patient may possess a combined total of up to six (6) mature plants and twenty-four (24) ounces of usable marijuana for that registry identification cardholder.

(5) A patient, the designated primary caregiver for a patient and/or a person responsible for a marijuana grow site must possess the Oregon Medical Marijuana Program identity card when using or transporting marijuana in a location other than the residence of the cardholder.

Stat. Auth.: ORS 475.306 & 475.319(1)(c)
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0090
Addition of Qualifying Diseases or Medical Conditions

(1) The Department shall accept a written petition from any person requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under section 333-008-0010 of these rules and be added to the list.

(2) The Department shall, within fourteen (14) days of receipt of the petition, send a letter by first-class mail requesting the petitioner to provide, if possible:

(a) An explanation for why the condition should be included;

(b) Any literature supporting the addition of the condition to the list;

(c) Letters of support from physicians or other licensed health care professionals knowledgeable about the condition; and,

(d) Suggestions for potential expert panel members.

(3) The State Public Health Officer or designee may make a final determination that a petition is frivolous and deny the petition without further review.

(4) If the petition is not denied under (3) above, the Department shall appoint an expert panel of five (5) to seven (7) individuals to review a petition. The members of the panel shall include the State Public Health Officer or designee, other physicians licensed under ORS 677, at least one patient, at least one patient advocate, and other professionals knowledgeable about the condition being considered.

(a) If the petitioner so desires, she or he shall be given the opportunity to address the panel in person or by telephone.

(b) If the petitioner so desires, his or her confidentiality shall be strictly maintained.

(5) The Department shall submit the written petition to the expert panel, which shall make recommendations to the Department regarding approval or denial.

(a) The members of the panel may examine medical research pertaining to the petitioned condition, and may gather information (in person or in writing) from other parties knowledgeable about the condition being considered.

(b) The panel members will submit individual recommendations to the State Public Health Officer, and the meetings of the panel will not be considered to be public hearings.

(6) The Department will make a final determination on a petition within one hundred eighty (180) days of receipt of the petition.

(7) Denial of a petition shall be considered a final Department action subject to judicial review.

(8) In cases where the condition in a person's petition is the same as, or is, as determined by the Department's State Public Health Officer, substantially equivalent to a condition that has already been denied in a previous determination, the Department may similarly deny the new petition unless new scientific research supporting the request is brought forward.

Stat. Auth.: ORS 475.334
Stats. Implemented: ORS 475.300 - 475.346
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0110
Advisory Committee on Medical Marijuana

(1) The Advisory Committee on Medical Marijuana (ACMM) shall advise the Director of the Department on the administrative aspects of the Oregon Medical Marijuana Program, review current and proposed administrative rules of the program, and provide annual input on the fee structure of the program.

(2) The Department will provide staff support to the ACCM by assisting with the scheduling of meetings, recording of minutes, and dissemination of meeting-related materials.

(3) The ACMM will adopt a Charter and By-Laws that details:

(a) How meetings will be conducted;

(b) The election of presiding officers; and

(c) The scheduling of at least four (4) public meetings per year.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 - 475.346
Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

333-008-0120
System to Allow Verification of Data at All Times

(1) The OMMP will establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, person responsible for a marijuana grow site, or grow site location is registered with OMMP.

(2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.

(3) The OMMP may allow the release of reports related to verification if it is without identifying data.

(4) The OMMP will have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two (2) business days, the OMMP will ensure program staff are available by phone for verification purposes.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.300 – 475.346
Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: PH 19-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-29-06
Notice Publication Date:
Rules Amended: 333-012-0265, 333-018-0030
Subject: The Department of Human Services is temporarily amending Oregon Administrative Rules (OAR): 333-012-0265 relating to informed consent; and 333-018-0030 relating to the reporting of HIV test results. These rules are being temporarily amended in order to implement 2005 Oregon Laws, Chapter 516 (HB 2706) and 333-019-0036 which requires physicians and others attending pregnant women in Oregon to include HIV testing among other previously required prenatal tests for infectious diseases.

OAR 333-012-0265 outlines informed consent rules for HIV testing. It will be revised to exempt prenatal testing.

OAR 333-018-0030 will be revised to exempt laboratories from the requirement that they collect a form from the physician assuring that all special procedures relating to consent for testing have been followed and containing demographic data on the patient and reason for test.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-012-0265
Informed Consent

(1) General scope. Pursuant to ORS 433.045(1), no person shall submit the blood of an individual to an HIV test without first obtaining informed consent or ascertaining that informed consent is obtained. This requirement does not apply to the HIV testing of women during pregnancy or delivery (ORS 433.045 and 433.017), or HIV testing of deceased persons in the anatomical gift setting or the official medical examiner setting or where a clinical laboratory performs an HIV test on a specimen obtained outside of Oregon.

(2) Who may give consent:

(a) Anyone permitted by the laws of Oregon to give consent to medical procedures for a particular individual may give consent for HIV testing of that individual;

(b) A minor under 15 years of age may also give consent.

(3) Statutory exceptions to the requirement of informed consent prior to HIV testing:

(a) Pursuant to ORS 433.055(3), informed consent for an HIV test need not be obtained from an individual if the test is for the purpose of research as authorized by the Division and if the testing is performed in a manner by which the identity of the individual is not known, and may not be retrieved by the researcher;

(b) Pursuant to Section 20(4), Chapter 600, Oregon Laws 1987, informed consent for an HIV test need not be obtained from an individual convicted of sex crimes or drug-related crimes who is tested for HIV infection by the Oregon Department of Corrections after being screened for and found to have evidence for possible exposure to HIV;

(c) Nothing herein is intended to exclude any other exceptions that may arise under Oregon law.

(4) Informed consent for HIV tests ordered by licensed physicians. In obtaining informed consent for an HIV test, a licensed physician shall follow the procedure in ORS 677.097.

(5) Informed consent for HIV tests ordered by other licensed health care providers or persons acting on behalf of licensed health care facilities. In obtaining informed consent for an HIV test, an other licensed health care provider or persons acting on behalf of a licensed health care facility shall use a procedure that is substantially similar to that specified in ORS 677.097.

(6) Informed consent for HIV tests ordered or arranged for by insurers, insurance agents, or insurance support organizations. In obtaining informed consent for an HIV test, an insurer, insurance agent, or insurance support organization as defined in ORS 746.600, or persons acting in behalf thereof, shall comply with the rules of the Insurance Division, OAR 836-050-0200 through 836-050-0255, which contain substantially the same procedures as specified in subsection (7)(a) of this rule.

(7) Informed consent for HIV tests ordered or arranged for by any persons other than those covered in sections (4), (5), and (6) of this rule. Informed consent for HIV tests ordered or arranged for by any persons other than: licensed physicians; other licensed health care providers; persons acting on behalf of licensed health care facilities; or insurers, insurance agents, and insurance-support organizations, as defined in ORS 746.600, shall be obtained as specified in this section:

(a) Procedure for informed consent. Except as provided in subsection (7)(b) of this rule, in order to obtain informed consent for an HIV test of an individual, any person subject to section (7) of this rule shall carry out the following procedure:

(A) Provide the individual for his/her retention a copy of the form as specified in Appendix 1;

(B) Orally summarize for the individual the substance of the statement in **Appendix 1** and specify alternatives to the HIV test in the particular instance, and if the test information will be disclosed to others, who those others will be;

(C) Explain the risks from having the HIV test. This shall include a description of Oregon law pertaining to the confidentiality of information about an individual having the test and that individual's test results; a statement that there may be circumstances under which disclosure might be permitted or required without consent; and a statement of the potential consequences in regards to insurability, employment, and social discrimination if the HIV test results become known to others;

(D) Inform the individual that he or she has the right to request additional information from a knowledgeable person before giving consent;

(E) Ask the individual to be tested whether he/she has any further questions, and if so, provide the individual a full and complete opportunity to ask those questions and receive answers from a person who is sufficiently knowledgeable to give accurate and complete answers about AIDS, HIV tests and the consequences of being tested or not tested;

(F) Have the individual sign a consent form as specified in **Appendix 1**, after having had an opportunity to read it;

(G) Maintain the signed form as specified in Appendix 1 for at least seven years.

(b) Exemptions from use of the form as specified in **Appendix 1**:

(A) Blood banks, plasma centers, and sperm banks may apply to the State Public Health Director for exemption from mandatory use of a form as specified in Appendix 1. In order to be eligible for such exemption, the blood bank, plasma center, or sperm bank must use a form or forms having a content substantially similar to that specified in **Appendix 1**. Approval of exemption by the State Public Health Director shall be in writing and shall be effective as to the form or forms approved for use under the application. The application must be in writing, dated and signed by the executive officer of the blood bank, plasma center, or sperm bank, and include a copy of the form or forms for which exemption is requested;

(B) If exemption is granted, all procedures specified in paragraphs (7)(a)(B)–(G) of this rule shall be applied in using the approved form adopted by the blood bank, plasma center, or sperm bank.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 433
Stats. Implemented:
Hist.: HD 5-1988, f. 3-15-88, cert. ef. 3-18-88; HD 29-1994, f. & cert. ef. 12-2-94; PH 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06

333-018-0030
Reporting of HIV Test Results

(1) Routine reporting of individuals who have been HIV tested. With the exception of specimens submitted for HIV testing of women during pregnancy or at delivery, pursuant to ORS 433.017, or for the purposes of donation or sale of blood, plasma or other blood products, sperm, or anatomical gifts, HIV test results on specimens obtained in Oregon shall be reported routinely in accordance with the following procedures:

(a) A Licensed Laboratory shall process a specimen obtained in Oregon for HIV testing only when it is accompanied by a DHS-prescribed form that is signed and dated by the Health Care Provider ordering the test or their designee (DHS 340344-03). This requirement does not apply to specimens taken for the purpose of monitoring the progression of disease in a patient previously found to be infected with HIV. For such follow-up monitoring, a Health Care Provider may arrange to forego the use of the DHS-prescribed form with the licensed laboratory in question by providing written confirmation to the laboratory that the patient has already tested positive and has given consent for this follow-up testing. This letter must include the patient's name or patient identification number (when one exists), provider name and provider address. Once such a letter is received by the laboratory, it may possess specimens from that patient without the DHS-prescribed form;

(b) The identity of the individual being tested shall not be recorded on the copy of the DHS-prescribed form which is to be submitted to the DHS;

(c) The Licensed Laboratory that is responsible for reporting the test results directly to the Health Care Provider, shall record the test results on the DHS-prescribed form, and forward all completed forms to the DHS within one week of completion of HIV testing. The forms must be submitted for specimens with both HIV-positive test results and negative results;

(d) If the specimen is tested other than by a Licensed Laboratory or is submitted to a clinical laboratory outside the state of Oregon, the Health Care Provider must, upon receipt of test results, complete the DHS-prescribed form and submit it to the Department within one week;

(e) The Health Care Provider and the Licensed Laboratory may use any other forms necessary for routine communication of test results and billing information, subject to the confidentiality requirements of OAR 333-012-0270.

(2) Reporting of HIV results of pregnant women.

(a) Licensed laboratories that receive specimens of blood from pregnant women accompanied by an order for a prenatal panel and/or for a HIV test will conduct HIV testing on that specimen unless the requesting health care provider indicates that the patient has declined HIV testing.

(b) The Licensed Laboratory that is responsible for reporting the test results directly to the Health Care Provider and the Health Care Provider may use any forms necessary for routine communication of test results and billing information, subject to the confidentiality requirements of OAR 333-012-0270.

(3) Reporting of HIV test results of donors in blood banks, plasma centers, sperm banks, and anatomical gift services. Special requirements apply to reporting results of HIV tests performed in these settings:

(a) Blood banks, plasma centers, sperm banks, and anatomical gift services, and insurance companies and their agents are not required to complete the DHS-prescribed form (DHS 340344-03) for each person tested;

(b) These facilities shall instead report to the DHS, on a quarterly basis beginning July 1, 1988, a summary of the number of individuals HIV tested during the three previous months, the number with HIV-positive test results, and the number with negative results. For insurance companies, this requirement applies to all tests performed at the request of the company for insurance eligibility purposes. This report shall also identify the test system used to identify positives and negatives. Such reporting shall be on a statistical basis only and shall not identify individuals.

NOTE: Specific rules regarding informed consent for HIV testing and confidentiality of HIV test results may be found in OAR 333-012-0265 and 333-012-2700.
Stat. Auth.: ORS 431, 432 & 433
Stats. Implemented: ORS 431, 432 & 433
Hist.: HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 6-1990(Temp), f. 2-22-90, cert. ef. 3-1-90; HD 16-1991, f. & cert. ef. 10-10-91; HD 10-1994(Temp), f. & cert. ef. 4-8-94; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06

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Adm. Order No.: PH 20-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 333-019-0036
Subject: The Department of Human Services is permanently amending Oregon Administrative Rule 333-019-0036, pursuant to 2005 Oregon Laws, Chapter 516 (HB 2706), requiring physicians and others attending pregnant women in Oregon to include HIV testing among other previously required prenatal tests for infectious diseases.
Rules Coordinator: Christina Hartman—(971) 673-1291

333-019-0036
Special Precautions Relating to Pregnancy and Childbirth

(1)(a) Blood samples drawn from women during pregnancy or at delivery pursuant to ORS 433.017 shall be submitted for standard tests for reportable infectious diseases or conditions which may affect a pregnant woman or fetus. Routine tests submitted shall include syphilis, hepatitis B, and HIV. Tests using bodily fluids other than blood that have equal or better sensitivity and specificity may be substituted for the blood test.

(b) "Consent of the patient to take a sample of blood" (as stated in ORS 433.017, Section 3) or other bodily fluid, is defined as notifying the patient or her authorized representative of the tests which will be conducted on that specimen. The patient or her authorized representative shall be informed that she may decline any or all of the tests.

(c) If a patient declines any of the offered tests, documentation shall be included in the medical record.

(2) Any person attending the birth of an infant (e.g., licensed physicians, persons acting under the direction of a licensed physician, midwives) shall evaluate whether the newborn is at risk for chlamydial or gonococcal ophthalmia neonatorum. If so, they shall ensure that the newborn receives erythromycin or tetracycline ophthalmic ointment or a comparable prophylactic treatment into each eye within two hours after delivery.

Stat. Auth.: ORS 431, 432, 433 & 437
Stats. Implemented:
Hist.: OHD 4-2002, f. & cert. ef. 3-4-02; PH 20-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: PH 21-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Adopted: 333-025-0165

Rules Amended: 333-025-0100, 333-025-0105, 333-025-0110, 333-025-0115, 333-025-0120, 333-025-0135, 333-025-0140, 333-025-0160

Subject: The Department of Human Services, Office of Family Health, is permanently amending and adopting rules relating to genetic information and privacy.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-025-0100
Definitions

As used in these rules:

(1) "Anonymous research" means scientific or medical genetic research conducted in such a manner that any DNA sample or genetic information used in the research is unidentified. "Anonymous research" does not include research conducted in such a manner that the identity of such an individual, or the identity of the individual's blood relatives, can be determined by use of a code, encryption key or other means of linking the information to a specific individual.

(2) "Biological sample" means any human biological specimen that may be used as a DNA sample.

(3) "Blanket informed consent" means that the individual has consented to the use of that individual's DNA sample or health information for any future research, but has not been provided with a description of or consented to the use of the sample in genetic research or any specific genetic research project.

(4) "Blood relative" means a person who is:

(a) Related by blood to an individual; and

(b) A parent, sibling, son, daughter, grandparent, grandchild, aunt, uncle, first cousin, niece or nephew of the individual.

(5) "Clinical" means relating to or obtained through the actual observation, diagnosis, or treatment of patients and not through research.

(6) "Coded" means identifiable only through the use of a system of encryption that links a DNA sample or genetic information to an individual or the individual's blood relative. A coded DNA sample or genetic information is supplied by a repository to an investigator with a system of encryption.

(7) "Covered entity," as applied to a health care provider, means a health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.518 to 192.524.

(8) "Deidentified" means lacking, or having had removed, the identifiers or system of encryption that would make it possible for a person to link a biological sample or health information to an individual or the individual's blood relative, and neither the investigator nor the repository can reconstruct the identity of the individual from whom the sample or information was obtained. DNA samples and genetic information will be considered deidentified only if they meet the following standards provided in the Federal Privacy Rule:

(a) A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:

(A) Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; and

(B) Documents the methods and results of the analysis that justify such determination; or

(b) The following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:

(A) Names;

(B) All geographic subdivisions smaller than a state, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

(i) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

(ii) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

(C) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;

(D) Telephone numbers;

(E) Fax numbers;

(F) Electronic mail addresses;

(G) Social security numbers;

(H) Medical record numbers;

(I) Health plan beneficiary numbers;

(J) Account numbers;

(K) Certificate/license numbers;

(L) Vehicle identifiers and serial numbers, including license plate numbers;

(M) Device identifiers and serial numbers;

(N) Web Universal Resource Locators (URLs);

(O) Internet Protocol (IP) address numbers;

(P) Biometric identifiers, including finger and voice prints;

(Q) Full face photographic images and any comparable images; and

(R) Any other unique identifying number, characteristic, or code; and

(c) The investigator and repository do not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.

(9) "Direct provider" means a health care provider that is not an indirect treatment provider.

(10) "Disclose" means to release, publish, or otherwise make known to a third party a biological sample or health information.

(11) "DNA" means deoxyribonucleic acid.

(12) "DNA sample" means any human biological specimen that is obtained or retained for the purpose of extracting and analyzing the individual's DNA to perform a genetic test. "DNA sample" includes DNA extracted from the specimen.

(13) "Federal Common Rule" means the Federal Policy for the Protection of Human Subjects, as adopted by the following federal agencies and as revised through November 13, 2001: 7 CFR Part 1c, Department of Agriculture; 10 CFR Part 745, Department of Energy; 14 CFR Part 1230, National Aeronautics and Space Administration; 15 CFR Part 27, Department of Commerce; 16 CFR Part 1028, Consumer Product Safety Commission; 21 CFR Parts 50 and 56, Food and Drug Administration; 22 CFR Part 225, International Development Cooperation Agency, Agency for International Development; 24 CFR Part 60, Department of Housing and Urban Development; 28 CFR Part 46, Department of Justice; 32 CFR Part 219, Department of Defense; 34 CFR Part 97, Department of Education; 38 CFR Part 16, Department of Veterans Affairs; 40 CFR Part 26, Environmental Protection Agency; 45 CFR Part 690, National Science Foundation; 45 CFR Part 46, Department of Health and Human Services; 49 CFR Part 11, Department of Transportation. In the case of research not subject to federal regulation under one of these provisions, "Federal Common Rule" means 45 CFR Part 46.

(14) "Federal Privacy Rule" means the federal regulations under the Health Insurance Portability and Accountability Act, 45 CFR parts 160 and 164.

(15) "Genetic characteristic" includes a gene, chromosome or alteration thereof that may be tested to determine the existence or risk of a disease, disorder, trait, propensity or syndrome or to identify an individual or a blood relative. "Genetic characteristic" does not include family history or a genetically transmitted characteristic whose existence or identity is determined other than through a genetic test.

(16) "Genetic information" means information about an individual or the individual's blood relatives obtained from a genetic test.

(17) "Genetic research" means research using human DNA samples, genetic testing or genetic information.

(18) "Genetic test" means a test for determining the presence or absence of genetic characteristics in a human individual or the individual's blood relatives, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes or proteins in order to diagnose or determine a genetic characteristic.

(19) "Health care facility" means a hospital, long term care facility, an ambulatory surgical center, a freestanding birthing center or an outpatient dialysis center. "Health care facility" does not mean:

(a) An establishment furnishing residential care or treatment not meeting federal intermediate care standards, not following a primarily medical model of treatment, prohibited from admitting persons requiring 24-hour nursing care and licensed or approved under the rules of the Department of Human Services or the Department of Corrections; or

(b) An establishment furnishing primarily domiciliary care.

(20) "Health care provider" has the meaning given in ORS 192.519(5).

(21) "Health information" means any information in any form or medium that:

(a) Is created or received by a health care provider, a state health plan, a health insurer, a healthcare clearinghouse, a public health authority, an employer, a life insurer, a school, or a university; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(22) “Human biological specimen” means any material derived from human subjects, such as blood, urine, tissues, organs, hair, nail clippings, or any other cells or fluids, whether collected for research purposes or as residual specimens from diagnostic, therapeutic, or surgical procedures.

(23) “Identifiable” or “Individually identifiable” means capable of being linked to the individual or a blood relative of the individual from whom the biological sample or health information was obtained, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual.

(24) “Identified” means having an identifier that links, or that could readily allow the recipient to link, a DNA sample or genetic information directly to the individual or a blood relative of the individual from whom the sample or information was obtained.

(25) “Identifier” means data elements that directly link a DNA sample or genetic information to the individual or a blood relative of the individual from whom the sample or information was obtained. Identifiers include, but are not limited to, names, telephone numbers, electronic mail addresses, Social Security numbers, driver license numbers and fingerprints.

(26) “Indirect provider” means a health care provider having a relationship with an individual in which:

(a) The health care provider delivers health care to the individual based on the orders of another health care provider; and

(b) The health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the individual.

(27) “Institutional Review Board” or “IRB” means an Institutional Review Board established in accord with and for the purposes expressed in the Federal Common Rule.

(28) “IRB approval” means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other institutional and Federal and State requirements.

(29) “Limited data set” means protected health information that, in accordance with the Federal Privacy Rule, excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

(a) Names;

(b) Postal address information, other than town or city, state, and zip code;

(c) Telephone numbers;

(d) Fax numbers;

(e) Electronic mail addresses;

(f) Social security numbers;

(g) Medical record numbers;

(h) Health plan beneficiary numbers;

(i) Account numbers;

(j) Certificate/license numbers;

(k) Vehicle identifiers and serial numbers, including license plate numbers;

(l) Device identifiers and serial numbers;

(m) Web Universal Resource Locators (URLs);

(n) Internet Protocol (IP) address numbers;

(o) Biometric identifiers, including finger and voice prints; and

(p) Full face photographic images and any comparable images.

(30) “Obtain genetic information” means performing or getting the results of a genetic test.

(31) “Opt-out statement” means a written expression of an individual’s desire to withhold his or her own biological specimen or clinical individually identifiable health information from use and disclosure for the purpose of anonymous research or coded research.

(32) “Person” includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance agent, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them.

(33) “Personal representative” includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions; and

(c) A person appointed as a personal representative under ORS Chapter 113.

(34) “Recontact” means disclosure of genetic research findings to a research subject or the subject’s physician through use of personal identifiers.

(35) “Research” means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

(36) “Retain a DNA sample” means the act of storing the DNA sample.

(37) “Retain genetic information” means making a record of the genetic information.

(38) “Specific informed consent for genetic research” means the individual or the individual’s representative has consented to the use of that individual’s DNA sample or genetic information for genetic research or for a specified genetic research project.

(39) “Unidentified” means deidentified or not identifiable.

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

Stat. Auth.: ORS 192.531

Stats. Implemented: ORS 192.531

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

333-025-0105
Scope

(1) OAR 333-025-0100 to 0165 apply to all genetic research subject to the law of the State of Oregon.

(2) All genetic research must comply with the applicable standards set forth in the Federal Common Rule. Additional protections for subjects of research are authorized by ORS 192.531 et seq. and these rules. These rules set state standards that are in addition to, and not intended to alter, any requirements under the Federal Common Rule or the Federal Privacy Rule.

Stat. Auth.: ORS 192.531 et seq.

Stats. Implemented: ORS 192.531 et seq.

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

333-025-0110
Institutional Review Boards (IRBs) and Approval for Research

(1) An IRB must conform to the organizational and operational standards contained in the Federal Common Rule.

(2) All proposed genetic research, including anonymous research, or research otherwise exempt from IRB approval, must first be submitted to an IRB for explicit prior approval or an explicit determination that the research is anonymous or otherwise exempt.

(3) A researcher must disclose to the IRB the intended use of human DNA samples, genetic tests or other genetic information for every proposed research project, including anonymous or otherwise exempt research.

(4) A researcher must follow the requirements of OAR 333-025-0115 and 333-025-0120 and provide assurances to the IRB that these requirements have been met.

Stat. Auth.: ORS 192.547

Stats. Implemented: ORS 192.533 & 192.547

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

333-025-0115
Informed Consent for Non-Exempt Genetic Research

(1) Except as provided in OAR 333-025-0120, a researcher may use an identified human biological sample or genetic information obtained on or after June 25, 2001, for genetic research only with specific informed consent for genetic research.

(2) Except as provided in OAR 333-025-0120, a researcher may use an identified human biological sample or genetic information obtained prior to June 25, 2001, for genetic research with blanket informed consent or specific informed consent for genetic research.

Stat. Auth.: ORS 192.535 & 192.547

Stats. Implemented: ORS 192.535 & 192.547

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

333-025-0120
Anonymous, Coded, or Exempt Genetic Research

(1) Any person proposing to conduct genetic research that is thought to be anonymous shall obtain from an IRB, prior to conducting such research, a determination that the research is anonymous. The person shall furnish the IRB with assurances that the criteria in (3) below are met.

(2) Any person proposing to conduct research that is thought to be exempt from review shall obtain an IRB determination that the research is

exempt from review under 45 CFR 46.101(b) or other applicable exemption from the Federal Common Rule.

(3) A human biological sample or clinical individually identifiable health information may be used in anonymous or coded genetic research only if prior to the time the research is conducted:

(a) The subject has granted informed consent for the specific anonymous or coded research project; or

(b) The subject has granted consent for genetic research generally; or

(c) The subject was notified in accordance with OAR 333-025-0165 that the individual's sample or information may be used for anonymous or coded research, and before the sample or information was obtained, the subject did not request that the sample or information be withheld from anonymous or coded research; or

(d) The subject was not notified, due to emergency circumstances, in accordance with OAR 333-025-0165, that the individual's sample or information may be used for anonymous research or coded research, and the individual died before receiving the notice; or

(e) The subject has granted blanket informed consent and the sample or information was obtained before June 25, 2001; or

(f) The subject was deceased when the sample or information was obtained; or

(g) An Institutional Review Board:

(A) Waives or alters the consent requirements pursuant to the Federal Common Rule; and

(B) Waives authorization pursuant to the Federal Privacy Rule.

(4) In addition to the requirements of section (3) of this rule, genetic research in which the DNA sample or genetic information is coded shall satisfy the following requirements:

(a) The research has been approved by an Institutional Review Board after disclosure by the investigator to the board of risks associated with the coding;

(b) The code is:

(A) Not derived from individual identifiers;

(B) Kept securely and separately from the DNA samples and genetic information; and

(C) Not accessible to the investigator unless specifically approved by the Institutional Review Board.

(c) Data is stored securely in password protected electronic files or by other means with access limited to necessary personnel;

(d) The data is limited to elements required for analysis and is a limited data set; and

(e) The investigator is a party to a data use agreement with any limited data set recipient. The data use agreement must:

(A) Establish the permitted uses and disclosures of such information by the limited data set recipient, limited to research uses. The data use agreement may not authorize the limited data set recipient to use or further disclose the information in a manner that would violate the requirements of the Federal Privacy Rule, if done by the investigator;

(B) Establish who is permitted to use or receive the limited data set; and

(C) Provide that the limited data set recipient will:

(i) Not use or further disclose the information other than as permitted by the data use agreement or as otherwise required by law;

(ii) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by the data use agreement;

(iii) Report to the investigator any use or disclosure of the information not provided for by its data use agreement of which it becomes aware;

(iv) Ensure that any agents, including a subcontractor, to whom it provides the limited data set agrees to the same restrictions and conditions that apply to the limited data set recipient with respect to such information; and

(v) Not identify the information or contact the individuals.

Stat. Auth.: ORS 192.537 & 192.547
Stats. Implemented: ORS 192.535, 192.537 & 192.547
Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

333-025-0135
Information Concerning Deceased Individuals

(1) Anyone permitted by Oregon law to dispose of the body of a deceased individual or who is authorized by ORS 146.113 to 146.117 to submit the DNA sample of an unidentified deceased individual to a DNA diagnostic laboratory may obtain or retain genetic information for the purpose of identification of the deceased. After identification, relevant information concerning the death shall be submitted into the permanent medical record of the deceased.

(2) A DNA sample of or genetic information about a deceased individual may be used for medical diagnosis of blood relatives of the individual and for no other purpose except as otherwise authorized by law. A request to use a sample or information for such purpose may be made by:

(a) A representative designated by the decedent to act on the individual's behalf after death;

(b) The closest surviving blood relative of the decedent; or

(c) If there is more than one surviving blood relative of the same degree of relationship to the decedent, by the majority of the surviving closest blood relatives of the decedent.

(3) A DNA sample sent to a diagnostic laboratory for testing under Section (1) or (2) of this rule must be accompanied by an affidavit stating that the specific purpose for obtaining the DNA sample is to identify the deceased individual or is for medical diagnosis of blood relatives of the decedent, and for no other purpose.

(4) A person may use an individual's DNA sample or genetic information that is derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research, if the individual was deceased when the individual's biological specimen or clinical individually identifiable health information was obtained (OAR 333-025-0120).

Stat. Auth.: ORS 192.535, 192.537 & 192.539
Stats. Implemented: ORS 192.535, 192.537 & 192.539
Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0500 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0500 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0500 by PH 9-2004, f. & cert. ef. 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

333-025-0140
Informed Consent Procedures

(1) Unless exempted by ORS 192.535(1)(a)–(f), all persons collecting genetic information must conform to standards of informed consent as follows:

(a) Physicians licensed under ORS Chapter 677, and any other licensed health care providers or facilities, shall obtain informed consent according to ORS 677.097;

(b) Except as provided in OAR 333-025-0120, a person conducting research shall obtain informed consent according to the procedure given in OAR 333-025-0115; and

(c) If genetic information is collected in connection with an insurance transaction governed by ORS 746.135, informed consent will be conducted in the manner described by the Department of Consumer and Business Services under authority of ORS 746.135(1).

(2) For persons not described in (1) above, informed consent must be obtained using the form and process contained in Appendix 1 of these rules or a form which is substantively similar.

(3) Elements to be contained in a consent form for obtaining genetic information include:

(a) The name of the individual whose DNA sample is to be tested;

(b) The name of the individual, company, or organization requesting the genetic test for the purpose of obtaining genetic information;

(c) A statement signed by the individual whose DNA sample is to be tested indicating that he/she authorizes the genetic test; and

(d) A statement that specifies the purpose of the test and the genetic characteristic for which the DNA sample will be tested.

(4) Process for obtaining informed consent using the form contained in **Appendix 1** or a form that is substantively similar:

(a) Explain that the genetic test is voluntary;

(b) Inform the individual that he/she may choose not to have his/her DNA sample tested;

(c) Inform the individual that he/she has the option of withdrawing consent at any time;

(d) Explain the risks and benefits of having the genetic test, including:

(A) A description of the provisions of Oregon law pertaining to individual rights with regard to genetic information and the confidential nature of the genetic information;

(B) A statement of potential consequences with regard to insurability, employability, and social discrimination if the genetic test results or genetic information become known to others;

(C) The implications of both positive and negative test results; and

(D) The availability of support services, including genetic counseling.

(e) Inform the individual that it may be in his/her best interest to retain his/her DNA sample for future diagnostic testing, but that he/she has the right to have his/her DNA sample promptly destroyed after completion of the specific genetic test which was authorized;

(f) Inform the individual about the implications, including potential insurability, of authorizing disclosure to a third party payer that the genetic test was performed, and that he/she has the option of paying the cost of the genetic test out of pocket rather than filing an insurance claim;

(g) Ask the individual whether he/she has any further questions, and if so, provide the individual with the opportunity to ask questions and receive answers from either a genetic counselor or another person who is sufficiently knowledgeable to give accurate, understandable and complete answers to his/her questions;

(h) Request that the individual read, complete, sign and date the consent form; and

(i) Provide the individual with a copy of the completed form for his/her personal records.

[Appendices referenced are available from the agency.]
Stat. Auth.: ORS 192.535
Stats. Implemented: ORS 192.535
Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0510 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0510 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0510 by PH 9-2004, f. & cert. ef 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

333-025-0160

Procedure for Authorization of Disclosure by the Tested Individual or the Tested Individual's Representative

Except as provided in ORS 192.539, and except for research disclosures authorized by an Institutional Review Board in accordance with these rules, any person shall be required to obtain specific authorization from the individual on whose sample a genetic test was conducted, or an individual's representative, to disclose genetic information, by completing the consent form specified in ORS 192.522, or a form that is substantively similar and by using the following procedure:

(1) Request that the tested individual, or his/her representative, read, sign and date the prescribed consent form; and

(2) Read, sign, and date the prescribed consent form on behalf of the individual or organization requesting the release of genetic information; and

(3) Provide the tested individual, or his/her representative, with a copy of the completed consent form for his/her personal records.

Stat. Auth.: ORS 192.539
Stats. Implemented: ORS 192.539
Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0550 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0550 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0550 by PH 9-2004, f. & cert. ef 3-23-04; PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

333-025-0165

Provider Notification and Opt Out

(1) A direct provider that is a covered entity and who obtains a biological specimen or clinical individually identifiable health information from an individual must:

(a) Notify the individual or his/her personal representative, in accordance with this rule, that the individual's biological specimen or clinical individually identifiable health information may be used or disclosed for anonymous or coded research; and

(b) Give the individual the opportunity to make an opt-out statement.

(2) Any health care provider that is not described in Section (1) of this rule may, but is not required to, furnish the notification and opportunity for an opt-out statement described in Section (1) of this rule.

(3) A health care provider described in Section (1) of this rule must provide notification no later than the time required for federal privacy notices by the Federal Privacy Rule for services rendered on or after July 1, 2006 (see 45 CFR 164.520).

(4) If a health care provider is required to provide notification pursuant to Section (1) of this rule, the health care provider must provide notification at least once per individual, regardless of how many times the provider obtains the individual's biological specimen or clinical individually identifiable health information.

(5) If a health care facility provides the notice pursuant to Section (1) of this rule, a health care provider providing care to patients in the health care facility is not required to provide an additional notice with respect to services provided in the facility.

(6) Notification may be delivered in a manner determined by the health care provider within the requirements of this rule, including but not limited to any manner permitted for the provision of the notice of privacy practices required under the Federal Privacy Rule.

(7) Notification must include:

(a) A place where the individual may mark to indicate the individual's opt-out statement;

(b) A general explanation of the meaning of anonymous and coded research;

(c) A statement describing that the biological specimen or clinical individually identifiable health information may be used at some undetermined point in the future without further notice to the individual;

(d) A statement that a refusal to allow use of biological specimens or clinical individually identifiable health information will not affect access to or provision of health care by the provider originally providing notice;

(e) A statement specifying that the individual retains the right to make or revoke an opt-out statement by submitting in writing such a request to the health care provider originally providing notice;

(f) A statement indicating that an opt-out statement will be valid from the date received by the health care provider;

(g) A prominent heading indicating the purpose of the notice; and

(h) The name, or title, and telephone number or other contact information of a person or office to contact for further information.

(8) If a health care provider is required to provide notification pursuant to Section (1) of this rule, notification may be, but is not required to be, provided using the form contained in Appendix 2 of these rules.

(9) Any health care provider described by Section (1) of this rule that receives an opt-out statement of an individual must, at the time of disclosure of a biological specimen or clinical individually identifiable health information, inform the indirect provider that is the intended recipient that the individual's biological specimen or clinical individually identifiable health information is subject to an opt out statement.

(a) Methods to inform the indirect provider may include, but shall not be limited to, marking or noting the biological specimen container or clinical individually identifiable health information as subject to an opt-out statement. The mark or notation may be in any form that can be understood by the intended recipient.

(b) If an opt-out statement is received after the completion of the first service delivery and within the first fourteen (14) days from the completion of the first service delivery, a health care provider is encouraged, but is not required, to make a good faith effort to inform the indirect health care provider of the opt-out statement.

(c) Any recipient of an individual's biological specimen or clinical individually identifiable health information from a health care provider described by Section (1) of this rule that is not informed of the individual's opt-out statement within fourteen (14) calendar days of receipt may presume that the individual has not made an opt-out statement.

(10) Any health care provider subject to Section (1) of this rule must have a process in place to demonstrate compliance with this rule.

[ED. NOTE: Forms and appendices referenced are available from the agency.]
Stat. Auth.: ORS 192.547
Stats. Implemented: ORS 192.531 - 192.549
Hist.: PH 21-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: PH 22-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-29-06
Notice Publication Date:
Rules Amended: 333-510-0045
Subject: The Department of Human Services is temporarily amending Oregon Administrative Rule, 333-510-0045, relating to nursing services staffing in order to implement 2005 Oregon Laws, Chapter 665 (HB 2800).
Rules Coordinator: Christina Hartman—(971) 673-1291

333-510-0045

Nursing Services Staffing

(1) The hospital shall be responsible for the implementation of a written hospital-wide staffing plan for nursing services. The staffing plan shall be developed, monitored, evaluated and modified by a hospital staffing plan committee. To the extent possible, the committee shall:

(a) Include equal numbers of hospital nurse managers and direct care registered nurses;

(b) Include at least one direct care registered nurse from each hospital nurse speciality or unit, to be selected by direct care registered nurses from the particular specialty or unit. The hospital shall define its own specialities or units; and

(c) Have as its primary consideration the provision of safe patient care and an adequate nursing staff pursuant to this section.

(2) The written staffing plan for nursing services shall be evaluated and monitored for effectiveness, and the staffing plan shall be revised as necessary, as part of the hospital's quality assurance process. Written documentation of these quality assurance activities shall be maintained.

(3) The written staffing plan shall:

(a) Be based on an accurate description of individual and aggregate patient needs and requirements for nursing care and include a periodic quality evaluation process to determine whether the staffing plan is appropriately and accurately reflecting patient needs over time.

(b) Be based on the specialized qualifications and competencies of the nursing staff. The skill mix and the competency of the staff shall ensure that the nursing care needs of the patient are met and shall ensure patient safety.

(c) Be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations and recognize differences in patient acuteness.

(d) The hospital shall maintain and post a list of qualified, on-call nursing staff and staffing agencies that may be called to provide qualified replacement or additional staff in the event of emergencies, sickness, vacations, vacancies and other absences of nursing staff and that provides a sufficient number of replacement staff for the hospital on a regular basis. The list shall be available to the individual responsible for obtaining replacement staff.

(4) The written staffing plan for nursing services shall establish minimum numbers of nursing staff personnel including licensed nurses and certified nursing assistants on specified shifts. The number of nursing staff personnel on duty shall be sufficient to assure that the nursing care needs of each patient are met. In no case shall fewer than one registered nurse and one other nursing care staff member be on duty in a unit when a patient is present.

(5) The written staffing plan shall include a formal process for evaluating and initiating limitations on admission or diversion of patients to another acute care facility when, in the judgment of the direct care registered nurse, there is an inability to meet patient care needs or a risk of harm to existing and new patients.

(6)(a) An employer may not impose upon unionized nursing staff any changes in wages, hours or other terms and conditions of employment pursuant to a staffing plan developed or modified under subsection (3) of this rule unless the employer first provides notice to and, on request, bargains with the union as an exclusive collective bargaining representative of the nursing staff in the bargaining unit.

(b) A staffing plan developed or modified under subsection (3) of this rule does not create, preempt or modify a collective bargaining agreement or require a union or employer to bargain over the staffing plan while a collective bargaining agreement is in effect.

(7) Upon request of a hospital, the Department of Human Services may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital. Such request for a variance shall follow the procedure set forth in OAR 333-515-0060.

(8) When a hospital learns about the need for replacement staff, the hospital shall make every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse, or certified nursing assistant to work overtime. Reasonable effort includes the hospital seeking replacement at the time the vacancy is known and contacting all available resources as described in (3)(d) of this rule. Such efforts shall be documented.

(9) A hospital may not require a registered nurse, licensed practical nurse, or certified nursing assistant to work:

(a) Beyond the agreed-upon shift;

(b) More than 48 hours in any hospital-defined work week; or

(c) More than 12 consecutive hours in a 24-hour period, except that a hospital may require an additional hour of work beyond the 12 hours if:

(A) A staff vacancy for the next shift becomes known at the end of the current shift; or

(B) There is a potential harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

(10)(a) Time spent in required meetings or receiving education or training shall be included as hours worked for purposes of subsection (9) of this rule.

(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of subsection (9) of this rule.

(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer shall be included as hours worked for purposes of subsection (9) of this rule.

(11) The provisions of this rule do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan;

(b) In emergency circumstances. Emergency circumstances include, but are not limited to:

(A) Sudden unforeseen adverse weather conditions;

(B) Infectious disease epidemic of staff; and

(C) Any unforeseen event preventing replacement staff from approaching or entering the premises; or

(c) If a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in (3)(d) of this rule and is unable to obtain replacement staff in a timely manner.

(12) A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon shift or an agreed-upon extended shift without authorization from the appropriate supervisory personnel as required by the Oregon State Board of Nursing Oregon Administrative Rules 851-045-0015(1)(j) and (5).

(13) A hospital may not take retaliatory action against a nursing staff because the nursing staff person:

(a) Discloses or intends to disclose to a manager, a private accreditation organization, or a public body an activity, policy, or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff person reasonably believes poses a risk to the health, safety, or welfare of a patient or the public.

(b) Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation or law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe, dangerous or potentially dangerous care.

(14) A hospital shall post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, and 441.192, in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

Stat. Auth.: ORS 441 & 442
Stats. Implemented: ORS 441, 442
Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; OHD 20-2002, f. & cert. ef. 12-10-02; PH 22-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06

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Department of Human Services,
Self-Sufficiency Programs
Chapter 461

Adm. Order No.: SSP 17-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-30-06
Notice Publication Date:
Rules Amended: 461-135-0950
Subject: OAR 461-135-0950 is being amended to implement Senate Bill 913 (2005) and ORS 411.113 to revise the rules concerning suspension of medical assistance for inmates of public institutions who are either persons receiving medical assistance because of serious mental illnesses, on SSI, or pregnant women. The definitions of "inmate" and "public institution" are updated for consistency with current law.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0950
Eligibility for Inmates

For all programs covered under chapter 461 of the Oregon Administrative Rules:

(1) Except as provided in OAR 461-135-0750, an inmate of a public institution is not eligible for benefits.

(a) If a pregnant woman receiving medical assistance through the EXT, GAM, MAA, MAF, OHP, OSIPM or SAC program is an inmate of a public institution, her medical benefits are suspended. When the Department is informed the pregnant woman is no longer an inmate, her medical benefits are reinstated — effective on the first day she is no longer an inmate — if she meets the eligibility requirements of the program.

(b) In the OSIP and OSIPM programs, if a client who is receiving SSI becomes an inmate of a public institution, the medical benefits are suspended. Benefits may be suspended for up to one year. When the Department is informed the client is no longer an inmate, the medical benefits are reinstated — effective on the first day the client is no longer an inmate — if the client meets the eligibility requirements for the program.

(c) In the SAC program, medical benefits are suspended if a client who receives medical assistance because of a serious mental illness becomes an inmate of a public institution. When the Department is informed the client is no longer an inmate, the medical benefits will be reinstated, effective on the first day the client is no longer an inmate, and eligibility will be determined for all medical assistance programs. For purposes of this subsection, a client has a serious mental illness if the client has been

diagnosed, prior to becoming an inmate of a public institution, by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as suffering from dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a disorder caused primarily by substance abuse.

(2) An inmate is a person living in a public institution who is:

(a) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including a person being held involuntarily in a detention center awaiting trial or a person serving a sentence for a criminal offense;

(b) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;

(c) Residing involuntarily in a facility that is under governmental control; or

(d) Receiving care as an outpatient while residing in a public institution.

(3) For purposes of this rule, an individual is not an inmate if the individual resides at a youth care center as defined at ORS 420.855(4).

(4) An individual is no longer an inmate when:

(a) The person is released on parole, probation, or post-prison supervision;

(b) The person is on home- or work-release, unless the person is required to report to a public institution for an overnight stay; or

(c) The person is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual.

(5) A public institution is any of the following:

(a) A state hospital (as defined by ORS 162.135) such as the Oregon State Hospital, Eastern Oregon Psychiatric Center, Eastern Oregon Training Center, and any other hospital established by law for similar purposes, including the "SAIP" means Secure Adolescent Inpatient Program (SAIP), and the Secure Children's Inpatient Program (SCIP).

(b) A local correctional facility (as defined in ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds persons for more than 36 hours.

(c) A Department of Corrections institution (as defined in ORS 421.005): a facility used for the incarceration of persons sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(d) A youth correction facility (as defined in ORS 162.135):

(A) A facility used for the confinement of youth offenders and other persons placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(6) As used in this rule, the term public institution does not include:

(a) A medical institution as defined in 42 C.F.R. 435.1009;

(b) An intermediate care facility as defined in 42 C.F.R. 440.140 and 440.150;

(c) A publicly operated community residence that serves no more than 16 residents, as defined in 42 C.F.R. 435.1009; or

(d) A child-care institution as defined in 42 C.F.R. 435.1009 with respect to:

(A) Children for whom foster care maintenance payments are made under title IV-E of the Social Security Act; and

(B) Children receiving TANF-related foster care under title IV-A of the Social Security Act.

(7) In the GA program, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the person.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.113
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 17-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06

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Adm. Order No.: SSP 18-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 461-135-0701, 461-145-0410, 461-155-0210
Rules Repealed: 461-135-0701(T), 461-155-0210(T)
Subject: Rules 461-135-0701, 461-145-0410 and 461-155-0210 are being amended to reflect the October 1, 2005 termination of the General Assistance (GA) program that provided cash and medical assistance to individuals with severe physical or mental impairments who were waiting for their Supplemental Security Income (SSI) benefits to be approved by the Social Security Administration (SSA). These rule changes make permanent the temporary rules that provide that General Assistance cash and medical benefits cease after September 30, 2005, that GA cash benefits will not be counted as income for the purposes of determining OHP Standard eligibility and that existing GA clients will receive OHP Plus or OHP Standard medical benefits only to the extent that they are eligible for such benefits under these rules and the OHP eligibility rules.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0701
Terminate GA and GAM Programs October 1, 2005

(1) Effective October 1, 2005, the General Assistance (GA) and General Assistance Medical (GAM) programs are not funded. Notwithstanding any other rule of the Department, these programs are closed effective October 1, 2005.

(2) Effective September 30, 2005, all persons eligible for or receiving benefits of the GA or GAM programs become ineligible for these programs. Except as provided in section (4) of this rule, the Department will not authorize or provide any benefit under the GA or GAM programs after September 30, 2005.

(3) Effective October 1, 2005, all GA recipients who receive medical assistance through the OSIPM program will continue to receive OHP Plus benefits through the OSIPM program.

(4) Effective October 1, 2005, all recipients of medical assistance through the GAM program who became ineligible for GAM on September 30, 2005 because of the closure of the GAM program may receive OHP benefits as follows:

(a) Clients who have been determined to meet the eligibility requirements of the OSIPM program (see OAR 461-125-0370 and the OSIPM eligibility requirements in OAR 461 Division 135) will receive the OHP Plus benefits package (see OAR 410-120-1210(2)(a)).

(b) Clients may also receive the OHP Plus benefits package for the period that:

(A) The Department has not previously made a determination about whether the client meets the disability requirements for OSIPM under OAR 461-125-0370 and the OSIPM eligibility requirements in OAR 461 division 135; and

(B) A determination is still pending about whether the client meets the disability requirements for OSIPM under OAR 461-125-0370 and the OSIPM eligibility requirements in OAR 461 division 135.

(c) Clients who do not qualify for the OHP Plus benefits may be eligible for the OHP-OPU program under the eligibility requirements set out in OAR 461 Division 135, and if eligible, will receive the OHP Standard benefits package (see OAR 410-120-1210(2)(b)).

Stat. Auth.: ORS 409.050 & 411.060
Stats. Implemented: ORS 411.010, 411.060, 411.710, 411.730 & 411.740
Hist.: AFS 21-2002(Temp), f. & cert. ef. 12-30-02 thru 6-27-03; SSP 12-2003, f. 5-29-03, cert. ef. 6-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2005(Temp), f. & cert. ef. 8-29-05 thru 2-25-06; SSP 12-2005(Temp), f. & cert. ef. 9-20-05 thru 2-25-06; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0410
Program Benefits

(1) Benefits from the GA, OSIP (except OSIP-IC), REF, and TANF programs (including the 10 percent late processing fee discussed in OAR 461-165-0150) are treated as follows:

(a) In all programs except EA, ERDC, FS, and OHP:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(b) In the EA program, the payments are counted as unearned income, except for benefit groups whose emergent need is the result of domestic violence. For those benefit groups, the payment is excluded.

(c) In the ERDC program, the payments are counted as unearned income.

(d) In the FS program:

(A) TANF payments are treated as unearned income.

(B) OSIP payments are treated as unearned income.

(C) GA and REF payments are treated as unearned income.

(D) An amount received as a late processing payment is treated as lump-sum income.

(E) Payments made to correct an underpayment are treated as lump-sum income.

(F) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, shelter exceptions, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(e) In the OHP program:

(A) GA payments are excluded from income for purposes of determining OHP eligibility.

(B) Benefits from the OSIP (except OSIP-IC), REF, and TANF programs (including the 10 percent late processing fee discussed in OAR 461-165-0150) are treated as follows:

(i) The payments are counted as unearned income if all the people included in the benefit group for the cash payment are also in the OHP financial group.

(ii) A prorated share is counted as unearned income if any of the people in the cash payment are not included in the OHP financial group. A prorated share is determined by dividing the total payment by the number of people in the TANF benefit group.

(iii) An administrative error overpayment (see OAR 461-195-0501(2)(a)) is excluded, and a payment made to correct an underpayment caused by the Department is excluded if the underpayment occurred prior to the budget period.

(2) TANF client incentive payments are treated as follows:

(a) In all programs except TANF, the monthly cooperation incentive special-need payment is counted as unearned income.

(b) Progress and outcome incentive payments received as cash are counted as lump-sum income. All other incentives are excluded.

(3) EA payments are treated as follows:

(a) In the ERDC and FS programs, payments made directly to the client are counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all other programs, the payments are excluded.

(4) Payments from the EXT, GAM, MAA, MAF, OHP, OSIP-IC, OSIPM, QMB, REFM, and SAC programs are excluded.

(5) Assessment Program payments are treated as follows:

(a) In all programs except FS, these payments are excluded.

(b) In the FS program, payments for basic living expenses, made directly to the client, are counted as unearned income. All other payments are excluded.

(6) ERDC payments and TANF child care payments are counted as follows:

(a) Provider-direct payments are counted as the provider's earned income.

(b) All client-direct payments are excluded.

(7) In all programs except EA, the value of a FS benefit is excluded. In the EA program, it is counted as a resource when determining the filing group's emergency food needs.

(8) JOBS, JOBS Plus, and OFSET service payments are excluded.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06

461-155-0210

Payment Standard; GA, GAM

The payment standard in the GA and GAM programs is $0.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.010, 411.060, 411.710, 411.730 & 411.740

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 16-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-1996(Temp), f. 1-30-96, cert. ef. 2-1-96; AFS 10-1996, f. 3-27-96, cert. ef. 4-1-96; AFS 11-1997(Temp), f. & cert. ef. 8-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-1999, f. 7-29-99, cert. ef. 8-1-99; AFS 19-2000, f. 7-31-00, cert. ef. 8-1-00; AFS 16-2001(Temp), f. & cert. ef. 8-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2005(Temp), f. & cert. ef. 8-29-05 thru 2-25-06; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06

Adm. Order No.: SSP 19-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 10-1-05, 11-1-05
Rules Adopted: 461-190-0195
Rules Amended: 461-101-0010, 461-115-0651, 461-120-0510, 461-135-0750, 461-135-0780, 461-135-0830, 461-135-1200, 461-140-0220, 461-140-0296, 461-145-0020, 461-145-0070, 461-145-0110, 461-145-0190, 461-145-0330, 461-145-0440, 461-145-0540, 461-145-0580, 461-155-0150, 461-155-0250, 461-155-0270, 461-155-0300, 461-155-0526, 461-155-0630, 461-160-0580, 461-160-0610, 461-160-0620, 461-180-0130, 461-185-0050, 461-190-0161, 461-190-0211, 461-190-0241, 461-195-0301, 461-195-0303, 461-195-0305, 461-195-0310, 461-195-0315, 461-195-0320, 461-195-0321, 461-195-0325, 461-195-0350
Rules Repealed: 461-135-0380, 461-155-0520
Subject: Rule 461-101-0010 is being amended to define the acronym "LIS". This rule is also being amended to remove the definition of the Employment Initiative (EI) program. The EI program did not receive continued funding from the 2005 legislative session effective October 1, 2005.

Rule 461-115-0651 is also being amended for consistency with federal regulations regarding the minimum verification required for food stamps at application, recertification or when a change is reported. In addition, the amendments clarify the verification is needed when changes are reported outside of the application or interim report for cases is using simplified reporting (formerly called Semi-annual reporting).

Rule 461-120-0510 is being amended to remove OFSET child care because OFSET is no longer paying for child care.

Rule 461-135-0380 is being repealed because the Department's 2005 Legislatively Approved Budget document did not provide funding for the Employment Initiative (EI) program, effective October 1, 2005. This rule was previously filed as a Temporary rule effective September 1, 2005.

Rule 461-135-0750 is being amended to correct a rule reference that has changed.

Rules 461-135-0780, 461-155-0250, 461-155-0270, 461-155-0300, 461-160-0580 and 461-160-0620 are being amended to reflect the Congressionally-approved cost-of-living increase for recipients of Social Security/SSI.

Rule 461-135-0830 is being amended to clearly state the eligibility requirements for Medicaid if someone is found eligible as a Disabled Adult Child. An Adult Disabled Child receives protected eligibility for Medicaid assistance and is not required to contribute income if the individual resides in various care settings.

Rule 461-135-1200 is being amended due to an erroneous rule citation. The reference to rule 461-135-0630 in subsection (4)(b) is being changed to 461-120-0630.

Rule 461-140-0220 is being amended to clarify when an annuity will not be considered a disqualifying transfer of resources.

Rule 461-140-0296 is being amended because the Department's treatment of annuities is changing effective January 1, 2006. Therefore, this provision only applies to annuities purchased on or before December 31, 2005.

Rule 461-145-0020 is being amended to specify that for annuities purchased on or after January 1, 2006, the annuity is counted as a resource unless it meets specified criteria.

Rule 461-145-0070 is being amended to remove the term "DHR-certified" from the rule.

Rule 461-145-0110 is being amended to add other volunteers under Title I as stated in the Domestic Volunteer Services Act. The other voluntary groups included under Title I are University Year of Action and Urban Crime Prevention.

Rule 461-145-0190 is being amended to describe more accurately the excluded meal programs and to describe the treatment of benefits from the Tribal food distribution program.

Rule 461-145-0330 is being amended to clarify the difference in treatment between making a loan to another and receiving a loan.

Rule 461-145-0440 is being amended to clarify the treatment of reimbursements.

Rule 461-145-0540 is being amended to clarify when trusts created prior to October 1, 1993 are considered available to the client. It is also being amended to clarify the application of the hardship provision.

Rule 461-145-0580 is being amended to clarify for clients receiving long term care or waivered services, the treatment of Veterans aid-and-attendance income in the eligibility determination only.

Rule 461-155-0150 is being amended to update terminology used in the rule including changing Professional Development Registry (PDR) to Oregon Registry.

Rule 461-155-0520 is being repealed because the subject of the rule has been incorporated into rule 461-155-0630. This rule no longer is applicable as a separate rule defining one living arrangement, adult foster care, when it is now defined with other living arrangements in 461-155-0630.

Rule 461-155-0526 is being amended to clarify when special needs payments do not apply.

Rule 461-155-0630 is being amended to include which individuals in the care settings listed can be subject to being found eligible for Medicaid by use of the special need of community based care. The special need is the amount of the service payment authorized by the Department for the care needs of those who are not found eligible under a home and community based care waiver. The special need is added to the base maintenance standard to create the person's eligibility in the community based setting. This amendment gives the needed direction to know which setting is affected and how the special need of community based care is applied.

Rules 461-160-0610, 461-160-0620 and 461-185-0050 are being amended to change the payment requirements for long-term care and Title XIX waivered services for clients who meet the eligibility requirements for the disabled widows and widowers under rule 461-135-0811; and widows and widowers under rule 461-135-0820.

Rule 461-180-0130 is being amended for clarify the period of time that food stamp benefits could be restored when the underpayment is due to an administrative error.

Rule 461-190-0161 is being amended to add the definition of the Degree Completion Initiative (DCI) to the definitions of the components and activities of the JOBS Program.

Rule 461-190-0195 is being adopted in order to create the Degree Completion Initiative (DCI) component. This rule describes DCI; defines key terms; and establishes the number of slots available, the application and selection process, and the eligibility requirements.

Rule 461-190-0211 is being amended to eliminate and remove references to TANF "at-risk" payments. At-risk payments are payments necessary to retain a job made to an individual who is at risk of qualifying for the TANF program because the individual is ineligible for TANF solely due to earned income.

Rule 461-190-0241 is being amended to add a provision that limits JOBS support service payments to a total of $1,000 for clients who are in the 12-month transition period after closing TANF. These support service payments cover child care, housing, transportation, and other necessary to retain a job. This amendment is a change to JOBS program policy.

Rules 461-195-0301, 461-195-0303, 461-195-0305, 461-195-0310, 461-195-0315, 461-195-0320, 461-195-0321, 461-195-0325, and 461-195-0350, pertaining to Personal Injury Claims and Liens, are being amended in their entirety to clarify Department processes, update terminology, and delineate rights and responsibilities of the Department, prepaid managed care organizations, and recipients of public assistance. These rules implement state law allowing recovery of public assistance funds when a judgment, settlement or compromise includes amounts of public assistance paid on behalf of a recipient. Definitions of terms are added and revised in Rule 461-195-0301, and these defined terms are used throughout these rules. Rule 461-195-0303 clarifies which clients are required to assign these rights to the Department. Rule 461-195-0305 clarifies when then 180-day limitation in ORS 416.580(1) begins to run if the Department is not notified of a judgment, settlement, or compromise. Rule 461-195-0305 also clarifies the amounts of a judgment, settlement, or compromise to which the lien does not attach. Rule 461-195-0310 is amended to indicate that its notification requirements include any authorized representative of the client. Rule 461-195-0310 is also amended to set out the rights of a prepaid managed health care organization (organization) to a cause of action and a lien. Rule 461-195-0315 is amended to expressly include claims or actions on behalf of a recipient. Rule 461-195-0320 is amended to indicate further criteria under which the Department will consider a request for partial or full lien release. Rule 461-195-0321 is being amended to change the situations under which the Department may assign a lien to an organization, to state the amount of the lien that may be assigned, to clarify that the organization assigned the lien is a designee of the Department, to describe the form of notice of lien that may be assigned to an organization, to set out the consequences on the Department and an organization if the organization fails to recover under lien, to set out the notification requirements for a person, public body, agency, or commission bound by a settlement, compromise or judgment on a personal injury lien, and to set out requirements on an organization and the Department after receiving such notification. Rule 461-195-0325 is amended to include situations where an organization has failed to perfect an assigned lien, to change the extent to which the Department may release or compromise its lien, and to set out the extent to which the Department and organization may do so. Rule 461-195-0350 is amended to provide exceptions under which a lien may attach to sums needed for rehabilitation and to set out when a hearing and court order is required prior to payment.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-101-0010

Program Acronyms and Overview

(1) Acronyms are used when referring to each program (except Assessment and Repatriate). There is an acronym for each umbrella program (for instance, ERDC) and acronyms for each subprogram (for instance, ERDC-SBG).

(2) When no program acronym appears in a rule in chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical — Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical — Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical — Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to convey the message that TANF is primarily a self-sufficiency development program and to help individuals find employment or other alternatives before they become dependent on public assistance.

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(9) ERDC; Employment — or Education-Related Day Care. Helps low-income families pay the cost of child care. When used alone, ERDC refers to all ERDC programs. The following codes are used for ERDC subprograms:

(a) ERDC-BAS; ERDC — Basic. Child care for working families.

(b) ERDC-SBG; ERDC — Student Block Grant. Child care for students.

(10) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the Assessment Program, MAA, or MAF due to an increase in their child support or earned income.

(11) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food.

(12) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(13) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(14) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 1335) were repealed July 1, 2001.

(15) JOBS; Job Opportunities and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(16) JOBS Plus. Provides subsidized jobs rather than FS or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, FS clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.

(b) FS-PLS; Clients eligible for JOBS Plus based on FS.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(17) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(18) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Assessment Program or ongoing TANF benefits.

(19) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(20) OFSET. The Oregon Food Stamp Employment Transition Program, which helps FS recipients find employment. This program is mandatory for some FS recipients.

(21) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(22) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program - Old Age Assistance.

(23) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(24) QMB; Qualified Medicare Beneficiaries. Additional medical coverage for Medicare recipients. When used alone, QMB refers to all QMB programs. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Special Medicare Beneficiary. Payment of all or a portion of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(25) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(26) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(27) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(28) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(29) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(30) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(31) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060, 411.816 & 414.342

Stats. Implemented: ORS 411.060, 411.816 & 414.342

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-

1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-115-0651

Required Verification and When to Verify; FS

(1) The Department must give households at least 10 days to provide required verification.

(2) All of the following information must be verified when a client initially applies for food stamp benefits:

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Residency.

(c) Citizenship or alien status.

(d) Social Security Number (SSN) or application for an SSN.

(e) Countable income.

(f) Medical expenses, if they are used as a deduction. Verification of a Medicare-approved drug discount card is required to use the actual, pre-discounted expense of a prescription as a deduction.

(g) An order to pay child support and the amount actually paid.

(h) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(3) All of the following information must be verified when a client reapplies for food stamp benefits within 30 days of a previous certification:

(a) A change in source of income, or the amount of stable income has changed by more than $50.

(b) The amount of variable income from any source.

(c) Previously unreported medical expenses, and recurring medical expenses which have changed by more than $25.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(4) For cases using the Change Reporting System (CRS) and the Monthly Reporting System (MRS), the following changes reported during the certification period must be verified:

(a) For CRS, a change in source of income, or the amount of stable income has changed by more than $50.

(b) For CRS, the amount of variable income from any source.

(c) Changes in reported medical expenses by more than $25, and previously unreported medical expenses.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(5) For cases using the Simplified Reporting System (SRS), each of the following changes reported during the certification period must be verified in accordance with OAR 461-170-0103:

(a) Alien status and SSN or application for an SSN when a new member joins the benefit group.

(b) Countable income.

(c) Medical expenses, if used as a deduction.

(d) An order to pay child support and the amount actually paid, if used as a deduction.

(6) A claimed expense or cost may be used to determine the food stamp benefit only when the client provides the required or requested verification.

(7) In addition to the verification required by sections (2) to (5) of this rule, the income for a client must be verified:

(a) Each month for a client in MRS.

(b) Every six months for a client in SRS.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.111 & 411.816

Hist.: AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-120-0510

Age Requirements for Clients to Receive Benefits

(1) If the year of a person's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be eligible for the EXT, MAA, MAF, OFSET, or TANF program:

(a) A child must be:

(A) Under 18 years of age; or

(B) Under 19 years of age and *regularly attending school* full time, as determined by the school.

(b) A caretaker relative may be any age.

(3) To be eligible for the SAC program, the child must be under 21 years of age.

(4) To be eligible for payment of child care costs for the ERDC or TANF program, a child must be:

(a) Under 12 years of age for the ERDC program or under 13 years of age for the TANF program; or

(b) Under 18 years of age and:

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the special need rate for child care in OAR 461-155-0150; or

(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

(5) To be eligible for the FS, OSIP-AB, OSIPM-AB, QMB-BAS, QMB-SMB, or REFM programs, a client may be any age.

(6) To be eligible for the REF program, a client must be 18 years of age or older or must be emancipated.

(7) To be eligible for the OSIP-AD (except OSIP-EPD) program, a client must be 18 years of age or older and under 65 years of age.

(8) To be eligible for the OHP program, a client must meet the age requirements in OAR 461-135-1100.

(9) To be eligible for OSIPM-AD (except OSIPM-EPD), a client must be:

(a) Eighteen years of age or older and under 65 years of age; or

(b) Receiving SSI, without regard to age.

(10) To be eligible for the OSIP-OAA or OSIPM-OAA programs, a client must be 65 years of age or older.

(11) To be eligible for the QMB-DW program, a client must be under 65 years of age.

(12) To be eligible for OSIP-EPD and OSIPM-EPD, the client must be 18 years of age or older or be legally emancipated.

(13) To be eligible for the BCCM program, a woman must be under 65 years of age.

(14) To be eligible for the GA and GAM programs, a client must be:

(a) Eighteen years of age or older and less than 65 years of age; or

(b) Sixty-five years of age or older and must be a non-citizen who meets the requirements of OAR 461-120-0125.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 18-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-135-0750

Eligibility for People in Long-Term Care or Waivered Services; OSIPM

(1) A client who meets the requirements of section (2) of this rule is eligible for services in any of the following locations:

(a) A nursing facility.

(b) An intermediate care facility for the mentally retarded (ICF/MR).

(c) A psychiatric institution, if the person is not yet 21 years of age or has reached the age of 65.

(d) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(2) A person who resides in a location listed in section (1) of this rule is eligible for OSIPM if the person—

(a) Meets the eligibility requirements for the OSIPM program except that income is above the program standards;

(b) Has income at or below 300 percent of the full SSI standard; has established a qualifying trust as specified in OAR 461-145-0540(10)(c); or is eligible for the OSIPM-EPD program; and

(c) Meets one of the following eligibility standards:

(A) The criteria in OAR 411-015-0100.

(B) The level-of-need criteria for an ICF/MR.

(C) The eligibility standards for medically fragile children in OAR 411-350-0010.

(D) The eligibility standards for the CIIS behavioral program in OAR 411-300-0100 to 411-300-0220.

Stat. Auth.: ORS 411.060, 411.070 & 414.042
Stats. Implemented: ORS 411.060, 411.070 & 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-135-0780
Eligibility for Pickle Amendment Clients; OSIPM

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the person was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the person's and if applicable the spouse's Social Security benefits by the applicable percentage. This amount is the person's countable Social Security for purposes of the Pickle Amendment. Add that figure to any other countable income the person has, if the total is less than the OSIP income standard plus the $20 unearned income disregard the person is Pickle eligible. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Table not printed See ED. NOTE.]

[ED. NOTE: Calculations referenced are available from the agency.]
Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.070
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-135-0830
Eligibility for Disabled Adult Children; OSIPM

A client is eligible for OSIPM as a disabled adult child if the client meets all of the following requirements:

(1) The client is age 18 or older.

(2) The client is currently blind or disabled as defined by SSA and was receiving SSI prior to age 22.

(3) The client is entitled to Social Security benefits on a parent's record due to retirement, death, or disability; and loses OSIP and SSI due to receipt of that benefit or increases in that benefit.

(4) The client would continue to be eligible for OSIP and SSI in the absence of the Social Security disabled adult child benefit or increases to that benefit.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-135-1200
Domestic Violence

(1) The Department is authorized by ORS 411.117 to waive or modify requirements of the TANF program that make it more difficult for clients to escape domestic violence or put them at risk of further or future domestic violence.

(2) The Department waives the TANF requirement in OAR 461-135-0070(1)(e) for a pregnant woman to have reached late pregnancy if a client is at risk of further or future domestic violence.

(3) Except as provided in section (4) of this rule, a client is not required to meet a requirement of the TANF program contained in this chapter of rules if and while compliance by the client would make it more difficult for the client to escape domestic violence or place the client at risk of further or future domestic violence.

(4) The following TANF requirements remain in effect as described even if a client is a victim of domestic violence or at risk of victimization by domestic violence:

(a) The TANF requirements in OAR 461-135-0070 to be a dependent child, a caretaker relative, or parent.

(b) The TANF requirement in OAR 461-120-0630 that a dependent child live with a caretaker relative, except the latter requirement may be waived during a reasonable period while the caretaker relative escapes from further or future domestic violence.

(c) The requirement of residency for TANF in OAR 461-120-0010 except that a person may access TA-DVS if the person meets all other eligibility requirements and is currently in Oregon while fleeing to another state for safety reasons arising from domestic violence.

(d) Income or resource limits except as specifically provided in OAR 461-140-0020 and 461-140-0040.

Stat. Auth.: ORS 411.117
Stats. Implemented: ORS 411.117
Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-140-0220
Determining If a Transfer of a Resource is Disqualifying

A transfer of a resource is not *disqualifying* if made under one of the following circumstances:

(1) Except as otherwise provided in OAR 461-140-0242, the transferred item was an excluded resource or personal property, such as jewelry or furniture, and the financial group resource total was less than allowable limits at the time of the transfer.

(2) The resource was sold or traded:

(a) For all programs except the Food Stamp program, for compensation equal to or greater than fair market value.

(b) For the Food Stamp program, for compensation near, equal to or greater than fair market value.

(3) The resource was transferred between members of the same financial group, including members who are ineligible aliens or disqualified people.

(4) The transfer settled a legally enforceable claim against the resource or client.

(5) Except in the OSIP, OSIPM and QMB programs, a court ordered the transfer.

(6) In the OSIP, OSIPM and QMB programs, a court ordered the transfer and:

(a) The transfer occurs more than 36 months or 60 months before the date of application, whichever is applicable under OAR 461-140-0210(3)(c); or

(b) There is an institutionalized spouse who began a continuous period of care on or after October 1, 1989, and — after performing the calculations required in OAR 461-160-0580(1) — the amount of resources allocated to a community spouse does not exceed the largest of the four amounts set forth in OAR 461-160-0580(1)(f).

(7) The client was a victim of fraud, misrepresentation, or coercion, and legal steps have been taken to recover the resource.

(8) The resource is an annuity purchased on or before December 31, 2005, the client or the spouse of the client is the annuitant, and the entire amount of principal and earned interest is paid in equal installments during the actuarial life expectancy of the annuitant. For purposes of this section, the actuarial life expectancy is established by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B).

(9) The resource is an annuity purchased on or after January 1, 2006, and the client or the spouse of the client is the annuitant.

Stat. Auth.: ORS 411.060, 411.816 & OAR 418.100
Stats. Implemented: ORS 411.060, 411.816 & OAR 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 2-2002(Temp), f. & cert. ef. 2-26-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-140-0296
Length of Disqualification Due to a Resource Transfer; GA, GAM, OSIP, OSIPM or QMB

(1) A GA, GAM, OSIP, OSIPM or QMB financial group containing a member disqualified due to the transfer of a resource is disqualified from receiving benefits if the group filed an application for benefits on or after October 1, 1998.

(2) The length of a disqualification period resulting from a transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) divided by the factor listed below in this section, rounded down to the next whole number. The first month of a disqualification period is the month the resource was transferred except as provided in section (3) of this rule. The factor used in the calculation is:

(a) For an application filed prior to October 1, 2000 — $3,320.

(b) For an application filed on or after October 1, 2000 and prior to October 1, 2002 — $3,750.

(c) For an application filed on or after October 1, 2002 and prior to October 1, 2004 — $4,300.

(d) For an application filed on or after October 1, 2004 — $4,700.

(3) If disqualification periods calculated in accordance with section (2) of this rule overlap, they are applied sequentially so that no two penalty periods overlap. For instance, suppose a transfer in January results in a disqualification of three months, and a transfer in February results in a disqualification of two months. The penalty period is applied so that it starts in January and runs through May for a total of five months.

(4) If a resource is owned by more than one person, by joint tenancy, tenancy in common or similar arrangement, the share of resource owned by the client is considered transferred when any action is taken either by the client or any other person that reduces or eliminates the client's control or ownership in the client's share of the resource.

(5) If an annuity is purchased on or before December 31, 2005 that pays benefits beyond the actuarial life expectancy of the client, as determined by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B), a disqualification period will be assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.

(6) A single transfer of a resource may cause a disqualification for both a medical assistance program under this rule and the SSI cash grant. The period of the disqualification is likely to be longer for SSI than for the medical assistance program, so a person may be eligible again for the medical assistance program while still disqualified from receiving SSI. The provisions of this rule are applied without regard to the related disqualification for SSI.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 26-2000, f. & cert. ef 10-4-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0020
Annuities, Dividends, Interest, Royalties

(1) Interest income is counted as unearned income.

(2) Dividends are counted as unearned income unless the dividends are from a trust described in OAR 461-145-0540(10), in which case the dividends are not counted as income.

(3) Annuities and annuity payments are counted as follows:

(a) In the OSIP, OSIPM, and QMB programs:

(A) If a client or the spouse of a client purchases or transfers an annuity prior to January 1, 2006, the transaction may be subject to the rules on resource transfers at OAR 461-140-0220 and following. For an annuity that is not disqualifying but meets the criteria of OAR 461-140-0220, the annuity payments are counted as unearned income.

(B) If a client or the spouse of a client purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (3)(a)(C) of this rule.

(C) An annuity described in paragraph (3)(a)(B) of this rule is excluded if the criteria in subparagraphs (i), (ii), and (iii) are met, except that if an unmarried client is the annuitant, the requirements of subparagraph (iv) must also be met and if a spouse of a client is the annuitant, the requirements of subparagraph (v) must also be met.

(i) The annuity is irrevocable.

(ii) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subparagraph, the actuarial life expectancy is established by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B).

(iii) The annuity is issued by a business that is licensed and approved to issue commercial annuities by the state in which the annuity is purchased.

(iv) If an unmarried client is the annuitant, the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) The biological or adoptive child of the client, but only if this child is a minor dependent or meets the SSI disability criteria based on blindness or disability, and if the Department is named as the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(v) If a spouse of a client is the annuitant, the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(I) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) A biological or adoptive child of the spouse if this child is a minor dependent or meets the SSI disability criteria based on blindness or disability; and the client in the event that this child does not survive the spouse.

(D) If an annuity is excluded under paragraph (3)(a)(C) of this rule, annuity payments are counted as unearned income.

(E) If an annuity is a countable resource under this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any early withdrawals, and minus any surrender fees.

(b) In all other programs, annuity payments are counted as unearned income.

(4) Royalties are counted as unearned income, except that royalties are counted as earned income if the client is actively engaged in the activity from which the royalties are accrued.

Stat. Auth.: ORS 411.060, 411.816 & 418.100
Stats. Implemented: ORS 411.060, 411.816 & 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0070
Cash Contribution

(1) Cash *contributions* are monies given voluntarily to a financial group member by someone who is not in the group.

(2) For FS, *cash contributions* are counted as unearned income, except that cash contributions from charitable sources are excluded if all the following are true:

(a) The contribution is from a private, nonprofit charitable organization.

(b) The contribution is based on need.

(c) The contribution does not exceed $300 per quarter.

(3) For OHP, charitable contributions raised by a community to assist with a client's medical expenses are not unearned income; they are a resource not counted against the client's resource limit provided in OAR 461-160-0015.

(4) For all programs other than the Food Stamp program, and except as provided in section (3) of this rule, cash contributions are counted as unearned income.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.700 & 411.816
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1999, f. & cert. ef. 10-1-99; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0110
Domestic Volunteer Services Act (VISTA, RSVP, SCORE, ACE)

For all Department programs covered by chapter 461 of the Oregon Administrative Rules, with respect to federal programs under the Domestic Volunteers Service Act of 1973 (Pub. L. No. 93-113):

(1) Payments under Title I — VISTA, University Year of Action, and Urban Crime Prevention — are treated as follows:

(a) For MAA, MAF, OHP, SAC, and TANF, these payments are excluded, except that these payments are counted as earned income if the total value of all compensation is equal to or greater than compensation at the state minimum wage.

(b) For GA and GAM, payments are counted as unearned income.

(c) For all other programs:

(A) The payments are excluded if the client is receiving Department program benefits when they join the Title I program. The exclusion of payments continues until the client has a break in receiving Department benefits of more than one month.

(B) The payments are counted as earned income for clients who joined the Title I program before applying for Department program benefits.

(2) Payments are excluded for programs under Title II (National Older Americans Volunteer Programs), which include:

(a) Retired Senior Volunteer Program (RSVP) Title II, Section 201.

(b) Foster Grandparent Program Title II, Section 211.

(c) Older American Community programs.

(d) Senior Companion Program.

(3) Payments are excluded for programs under Title III (National Volunteer Programs to Assist Small Businesses and Promote Volunteer Service by Persons with Business Experience), which include:

(a) Service Corps of Retired Executives (SCORE) Title III, Section 302.

(b) Active Corps of Executives (ACE) Title III, Section 302.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.700 & 411.816
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0190
Food Programs Other Than the Food Stamp Program

(1) In all programs, the following benefits are excluded:

(a) Benefits from the Special Supplemental Food Program for Women, Infants and Children (WIC), including demonstration projects (coupons exchanged for food at farmers markets) under the Hunger Prevention Act of 1988 (Pub. L. 100-435, section 501).

(b) The value of supplemental food assistance provided to children under the Child Nutrition Act of 1966 (Pub. L. 89-642) and the National School Lunch Act (Pub. L. 79-396, section 12(e), and Pub. L. 94-105).

(c) Nutrition Assistance program benefits received in Puerto Rico, American Samoa or the Commonwealth of the Northern Marianna Islands.

(2) In all programs except FS, benefits from the tribal Food Distribution Program are excluded. In the FS program, these benefits are subject to OAR 461-165-0030.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0330
Loans and Interest on Loans

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) When a member of a financial group receives a loan:

(a) Educational loans are treated according to OAR 461-145-0150.

(b) Except in the GA, GAM, OHP, OSIP, OSIPM, and QMB programs, section (2) of this rule applies only if there is a written loan agreement that stipulates when the loan is due and is signed and dated before the borrower receives the proceeds of the loan.

(c) In the GA, GAM, OHP, OSIP, OSIPM, and QMB programs, section (2) of this rule applies whether the loan agreement is written or oral.

(d) For all programs except FS, loans obtained by the financial group are excluded, except as provided in subsections (2)(a) and (2)(f) of this rule for clients in the GA, GAM, OSIP, OSIPM, and QMB programs.

(e) In the FS program, cash on-hand from a loan is a resource, except as specified in subsection (2)(f) of this rule.

(f) In the FS, GA, GAM, OSIP, OSIPM, and QMB programs, the proceeds of a home equity loan or reverse annuity mortgage are excluded if received in regular, monthly payments. The proceeds not excluded under this rule are treated as lump sum income under OAR 461-140-0120.

(3) When a member of a financial group has made a loan and is receiving return payments as a result:

(a) The interest payment is unearned income.

(b) The payment of principal is excluded.

Stat. Auth.: ORS 411.060, 411.816 & 418.100
Stats. Implemented: ORS 411.700 & 411.816
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0440
Reimbursement

(1) A reimbursement is money or in-kind compensation provided specifically for an identified expense.

(2) For all programs except ERDC and FS, a reimbursement is treated as follows:

(a) A noncash reimbursement is excluded.

(b) A cash reimbursement is excluded if used for the identified expense, unless the expense is covered by program benefits.

(c) A reimbursement is counted as periodic or lump-sum income if not used for the identified expense.

(d) A reimbursement for an item already covered by the benefit group's benefits is counted as periodic or lump-sum income.

(3) For ERDC, a reimbursement is excluded, except that a reimbursement for child care from a source outside of the Department is counted as unearned income.

(4) For the Food Stamp program:

(a) A cash reimbursement for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.

(b) Any other reimbursement is treated as follows:

(A) A noncash reimbursement is excluded.

(B) A cash reimbursement is excluded if used for the identified expense, unless the expense is covered by program benefits.

(C) A reimbursement is counted as periodic or lump-sum income if not used for the identified expense.

(D) A reimbursement for an item already covered by the benefit group's benefits is counted as periodic or lump-sum income.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.700 & 411.816
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0540
Trusts

(1) Trust funds are money, securities, or similar property held by a person or institution for the benefit of another person.

(2) This section applies to all trust funds in the FS, MAA, MAF, OHP, REF, SAC, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group for items covered by program benefits. For OSIP, OSIPM, and QMB, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(3) In the ERDC program, all trust funds are excluded.

(4) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (11) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (9) of this rule.

(5) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(6) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(8) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(9) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(10) Notwithstanding the provisions above in this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined disabled by SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent.

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of $50 per month, including the following:

(i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

(iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical care costs that are not reimbursed by a third party. Contributions to reserves for personal liabilities including but not limited to child support, alimony, and property and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan on a monthly basis and contributions to a reserve for home maintenance if the client's name remains on the title.

(F) Patient liability not to exceed the cost of waivered services or nursing facility care.

(d) A trust containing the resources or income of a client who is disabled as defined by SSI criteria and created before the client reached age 65, meeting the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who are disabled.

(D) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid.

(11) In the GA, GAM, OSIP, OSIPM, and QMB programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.816 & 418.100
Stats. Implemented: ORS 411.060, 411.700, 411.816 & 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef, 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-145-0580
Veterans' Benefits

(1) Veterans' benefits, other than the aid-and-attendance, educational, and training and rehabilitation program benefits, are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) Other payments are counted as periodic or lump-sum income.

(2) Veterans' aid-and-attendance payments are treated as follows:

(a) In the FS and OHP programs, the payments are excluded.

(b) For OSIP, OSIPM, and QMB clients receiving long-term care or Title XIX waivered services, the payments are treated as follows:

(A) When determining eligibility, the payment is excluded.

(B) When calculating monthly benefits or patient liability, the payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home- or community-based waivered care provided to the client during the months covered by the payment. Any excess is counted as lump-sum or periodic income.

(c) In all other programs, aid-and-attendance payments are treated as follows:

(A) Payments for services not covered by the Department's programs are excluded.

(B) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income.

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) In the Food Stamp program, a subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated as earned income. In all other programs, it is unearned income.

(5) Payments under Public Law 104-204, § 421(b)(1), 110 Stat. 2923 (1996), to children of Vietnam veterans who are born with spina bifida are excluded (see 38 U.S.C. 1805(d)).

Stat. Auth.: ORS 411.060, 411.700, 411.816 & 418.100
Stats. Implemented: ORS 411.060, 411.700, 411.816 & 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-155-0150
Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: A child aged birth through 12 months.

(b) Toddler: A child aged 1 year through 30 months.

(c) Preschool Child: A child aged 31 months through 5 years.

(d) School Child: A child aged 6 years or older.

(e) Special needs child: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets:

(A) The training requirements of the Oregon Registry entry level, established by the Oregon Center for Career Development in Childhood Care and Education; or

(B) The training requirements established by the Child Care Division for registered family providers who apply to become registered after October 1, 1999.

(c) The Enhanced Group Rate applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(d) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(e) The Enhanced Center Rate applies to child care provided in a center that is certified by the Child Care Division or in an exempt center whose staff meet the training requirements of the Oregon Registry entry level established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry entry level training requirements noted in paragraph (2)(b)(A) of this rule.

(B) New staff must meet the Oregon Registry entry level training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (2)(e)(A) of this rule.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(f) An exempt center is eligible to receive the enhanced rate for a maximum of six months while in the process of meeting the requirements of subsection (2)(e) of this rule if it files a statement of intent to meet the requirements on a form prescribed by the Department.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (2)(b), (c), (e), or (f) of this rule.

(3) Subject to the provisions in section (6) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

(4) The number of payable billable hours for a child is limited as follows:

(a) For the ERDC-BAS and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-190-0161 and 461-190-0310); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS program.

(b) For the ERDC-SBG program, the total may not exceed the number of hours of care necessary for the client to maintain his or her education, training or employment. The total may not exceed 125 percent of the sum of 200 percent of class hours and the time the client is at work.

(c) In the ERDC-BAS and TANF programs, for a client who earns less than state minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage. The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the client's or child's circumstances, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, limited to 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in subsection (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly). [Table not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is 1.50 times the amount given in OAR 461-155-0225(2)(a), rounded down to the next whole number. The ERDC copay is $25 or the amount determined by the formula in subsection (b) of this section, whichever is greater.

(b) The maximum copay equals the constant determined by the table in subsection (c) of this section, added to the product of a constant determined by the table in subsection (d) of this section times the constant determined by the table in subsection (e) of this section raised to a power equal to the family's gross income, expressed in dollars. The formula is as follows: y = k + (b X m^x)

(c) The constant k is determined by the number of people in the need group, as follows:

(A) 2 persons: k = -30

(B) 3 persons: k = -55

(C) 4 persons: k = -50

(D) 5 persons: k = -51

(E) 6 persons: k = -80

(F) 7 persons: k = -92

(G) 8 or more persons: k = -103

(d) The constant b is determined by the number of people in the need group, as follows:

(A) 2 persons: b = 18.0

(B) 3 persons: b = 23.0

(C) 4 persons: b = 20.9
(D) 5 persons: b = 20.6
(E) 6 persons: b = 33.2
(F) 7 persons: b = 33.2
(G) 8 or more persons: b = 40.4
(e) The constant m is determined by the number of people in the need group, as follows:
(A) 2 persons: m = 1.001885
(B) 3 persons: m = 1.001550
(C) 4 persons: m = 1.001380
(D) 5 persons: m = 1.001250
(E) 6 persons: m = 1.000990
(F) 7 persons: m = 1.000910
(G) 8 or more persons: m = 1.000795
(11) Effective October 1, 2003, a client's copay is limited to $25 during the first month the client is eligible for ERDC. This limitation cannot be used in more than one month in any 12 consecutive months.
(12) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:
(a) The amount billed by the provider or providers.
(b) The monthly rate established in this rule for 215 hours of care.
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp); f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-155-0250
Income and Payment Standard; OSIP, OSIPM

(1) For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) clients in long-term care and in waivered nonstandard living arrangements, the countable income limit standard is 300 percent of the SSI standard. The one-person SSI standard is used for an individual who has no income and is living alone in the community to compute the countable income limit. Other OSIP and OSIPM clients do not have a countable income limit.
(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for housing, utilities, food, clothing, personal incidentals and household supplies. The standard is itemized as follows: [Table not included. See ED. NOTE.]
(3) The payment standard is used as the adjusted income limit and to calculate cash benefits for non-SSI OSIP clients. The OSIP-AB adjusted income standard includes a transportation allowance. The total standard is: [Table not included. See ED. NOTE.]
(4) The payment standard for SSI/OSIP clients living in the community is either the SIP amount or the ESB amount. The SIP (supplemental income payment) is a need amount added to any other special or service needs to determine the actual payment. The ESB (excess SSI benefit) is a resource amount used to offset special and service need payments:
(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than $20: [Table not included. See ED. NOTE.]
(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is $20 or more: [Table not included. See ED. NOTE.]
(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, $20 is added to the SIP amount.
(d) For SSI couples in an AFC, ALF or RCF, an amount is added to each person's SIP entry that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.
(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:
(a) For clients who receive a VA pension based on unusual medical expenses (UME), $90 is allowed.
(b) For all other clients, $30 is allowed.
(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted income limit is 250 percent of the 2005 federal poverty level for a family of one. This 250 percent limit equals $1,994 per month or $23,928 per year.
(7) In the OSIP-EPD and OSIPM-EPD programs, $970 in earnings is needed to meet the requirement in OAR 461-110-0115 for "sufficient earnings" in the definition of "attached to the workforce."
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.070
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-155-0270
Payment Standard for NSLA; OSIP, OSIPM

For all OSIP and OSIPM cases in nonstandard living arrangements, the OSIP/OSIPM Payment Standard is allocated as follows: [Table not included. See ED. NOTE.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060 & 411.070
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-155-0300
Shelter-in-Kind Standard

For OSIP, OSIPM, and QMB, the Shelter-in-Kind Standard is:
(1) For a single person:
(a) Living alone, $377 for total shelter or $226 for housing costs only.
(b) Living with others, $175 for total shelter or $105 for housing costs only.
(2) For a couple:
(a) Living alone, $460 for total shelter or $276 for housing costs only.
(b) Living with others, $169 for total shelter or $101 for housing costs only.
Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060 & 411.070
Hist.: AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-155-0526
Special Need; Community Transition Services; OSIP and OSIPM

(1) In the OSIP and OSIPM programs, the Department will authorize one-time payments for allowable expenses necessary for clients to set up housing in Oregon in their own homes or apartment, not including an adult foster home. Payments are allowed only for the following clients who are returning to the community if they meet the criteria for one of the service priority levels served by the Department according to OAR 411-015-0015(1):
(a) Clients leaving a nursing facility.
(b) Clients who have been admitted as an inpatient and are leaving an acute care hospital.
(2) Examples of allowable expenses are expenses for moving; housing security deposits; essential furnishings; eating utensils; food preparation items; deposits for utility hook-ups for heat, electricity and telephone; and health and safety measures such as pest eradication or allergen control. Allowable expenses do not include rent for housing or temporary housing, ongoing utility costs, medical supplies such as reachers, grabbers, wheel-

chairs, and transfer trays, or recreational items such as a television or cable television access.

(3) Payment will be authorized only for the minimum amount necessary to establish the client's basic living arrangement.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-155-0630
Special Need; Community-Based Care

In the OSIPM program:

(1) A client is considered living in community based facility if the client resides at one of the following care settings licensed by the Department:

(a) Adult Foster Care;

(b) Residential Care;

(c) Assisted Living;

(d) Specialized Living;

(e) Group Care Homes.

(2) In determining eligibility for OSIPM for an individual not covered by a home and community based care waiver, the special need (see OAR 461-155-0010) is the amount of the service payment authorized by the Department and is added to the OSIP maintenance standard.

(3) If a client who meets the applicable income requirements begins living in community based facility:

(a) Payment for room and board may be authorized during the month of admission at the initial placement, limited to the approved rate.

(b) Room and board payments may be paid to the community based facility during the temporary absence of a client if all of the following criteria are met:

(A) The absence occurs because the client is admitted to a hospital or nursing home.

(B) The Department determines the intent of the client to return to the community based facility.

(C) The community based facility is willing to accept the room and board payment.

(D) The client returns within two full months following the month in which the absence began.

(c) Service payments will not be paid for any time during the period of absence of the client from a community based facility.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1994, f. & cert. ef. 7-1-94; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-160-0580
Excluded Resource; Community Spouse Provision On or After 10/1/89 (OSIP and OSIPM except OSIP-EPD and OSIPM-EPD)

(1) In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who began a continuous period of care on or after October 1, 1989.

(2) Whether a couple lives together or not, the determination of whether the value of the couple's resources exceed the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-160 rules applicable to OSIP describe which of the couple's resources are countable resources. Division 461-160 rules applicable to OSIP clients are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIP clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than $99,540.

(B) $19,908 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule, (OAR 461-160-0580(2)(c)(C) and (2)(f)(C)), the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph (D) is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(1)(d).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIP resource standard for one person (under OAR 461-160-0015(6)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than $99,540) plus the OSIP resource standard for one person.

(B) $19,908 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (See paragraph (2)(c)(C) of this rule for definition of court-ordered community spouse resource allowance.)

(D) The OSIP resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(1)(d).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

Stat. Auth.: ORS 411.060 & 411.700
Stats. Implemented: ORS 411.060 & 411.700
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03,

cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-160-0610
Client Liability for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)

Clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who live in or enter a long-term care setting or who receive Title XIX waivered services must, in order to remain eligible, make the payment required by this rule as follows:

(1) Clients who do not receive SSI, but who meet the income requirements, may be eligible for OSIP and OSIPM. These clients must apply their adjusted income to the cost of their care or service. This is their client liability. If their adjusted income exceeds their cost of care or service, they must pay the full cost of care but have no additional liability.

(2) Clients who receive SSI, or are deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), are eligible for OSIP and OSIPM without having to make a payment.

(3) A client identified in section (4) of this rule is subject to or exempt from payments as follows:

(a) If this client is living in a nursing facility, a state institution, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, the client makes the payments required by this rule.

(b) If this client lives in a waivered living arrangement, the client is exempt from payments required by this rule.

(4) Section (3) of this rule applies to each client who meets the eligibility requirements for one of the following categories:

(a) A disabled adult child under OAR 461-135-0830.

(b) A disabled widow or widower under OAR 461-135-0811.

(c) A widow or widower under OAR 461-135-0820.

Stat. Auth.: ORS 411.060, 411.070 & 414.042
Stats. Implemented: ORS 411.060, 411.070 & 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-160-0620
Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for a client specified in subsection (a) of this section as explained in subsections (a) through (i) of this section. The liability of the client is determined according to subsection (j).

(a) Deductions are made in the order below for a client who resides in or is entering a long-term care facility or receives Title XIX waivered services, except that there is no client liability for ---

(A) A client who receives SSI or is deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)).

(B) A client in one of the following categories who receives only waivered services:

(i) A client in OSIPM-IC.

(ii) An adult disabled child as described at OAR 461-135-0830.

(iii) A disabled widow or widower under OAR 461-135-0811.

(iv) A widow or widower under OAR 461-135-0820.

(b) One standard earned income deduction of $65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is $85 in the OSIP-AB and OSIPM-AB programs.

(c) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-140-0420.

(d) One of the following need standards is deducted:

(A) A $30 personal needs allowance for a client in long-term care.

(B) A $90 personal needs allowance for a client in long-term care who is eligible for VA benefits based on unusual medical expenses. The $90 allowance is allowed only when the VA benefit has been reduced to $90.

(C) The OSIP maintenance standard for a client who receives waivered services.

(e) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse if the income is made available to (or for the benefit of) the community spouse. If neither spouse is eligible for SSI and both receive waivered services through the home- and community-based care program in the same residence or facility, and if the countable income of either spouse is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(A) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(B) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. $1,604 is added to the amount over $481 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or $2,488.50, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The gross income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(iii) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(f) A dependent income allowance is deducted for each eligible dependent as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below $1,604. To determine the income allowance of the eligible dependent:

(i) The monthly income of the eligible dependent is deducted from $1,604.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(g) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(h) In the OSIPM program, medical deductions allowed by OAR 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(i) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(j) The client liability is determined as follows:

(A) For a client receiving waivered services (except a client identified in subsection (1)(a) of this rule), the liability is the actual cost of the waivered service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waivered services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, an acute hospital, a state hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, there is a liability as described at OAR 461-160-0610.

(2) The deduction used to determine adjusted income for a GA and GAM client in long-term care or waivered services is as follows:

(a) One standard earned income deduction of $65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of $85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070
Stats. Implemented: ORS 411.060 & 411.070
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991. f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-180-0130
Effective Dates; Restored Benefits

(1) The effective date for restoring benefits that were underpaid (including erroneous collections of overpayments) or denied or closed in error is one of the following:

(a) In all programs except FS, for underpayments resulting from administrative error, the effective date is the date the error was made, subject to the following conditions:

(A) In all programs except TANF, benefits can be restored only for the preceding 12 months.

(B) In the TANF program, benefits may be restored as far back as October 1, 1981.

(b) In all programs except FS, for underpayments resulting from client error, the effective date is the earliest of the following:

(A) The month the benefit group notifies the branch office of the possible loss.

(B) The month the branch office discovers the loss.

(C) The date a hearing is requested.

(2) In the FS program, for underpayments resulting from administrative error, benefits are restored for not more than twelve months prior to whichever of the following occurs first:

(a) The date the benefit group notifies the branch office of the possible loss.

(b) The date the branch office discovers the loss.

(c) The date a hearing is requested.

(3) In the FS program, benefits are not restored for underpayments resulting from client error.

(4) The effective date for restoring benefits that have been suspended is:

(a) The first of the month after the suspension, if suspension was for only one month; or

(b) The date the benefit group again becomes eligible, if benefits have been suspended for more than 30 days. Treat the month in which benefits are restored as an initial month.

Stat. Auth.: ORS 183, 411.060, 411.070, 411.105, 411.111, 411.300, 411.632, 411.700, 411.710, 412.025, 412.520, 413.009, 414.032, 416 & 418
Stats. Implemented: ORS 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-185-0050
Client Pay-In System

(1) Except as provided in section (3) of this rule, a client who receives waivered in-home services and has countable income above the payment standard for the benefit group must pay to the Department the lesser of the following amounts as a condition of being eligible for waivered in-home services:

(a) The difference between their adjusted income and the payment standard for the number in the benefit group.

(b) The actual cost of the waivered service.

(2) The Department will administer the pay-in system as follows:

(a) Each month, the Department will send the client an invoice requesting payment based on the calculation in section (1) of this rule.

(b) If the Department does not receive the payment by the 15th of the current month, the following notices will be automatically generated:

(A) A notice advising the client that services will end at the end of the month and providing information on other Medicaid programs; and

(B) A notice to the service provider that the Department will not reimburse the provider for services provided past the end of the current month.

(3) The following clients are exempt from the payment required by this rule:

(a) Clients in the OSIP-IC or OSIPM-IC program.

(b) Adult disabled children as described at OAR 461-135-0830.

(c) Disabled widows and widowers under OAR 461-135-0811.

(d) Widows and widowers under OAR 461-135-0820.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-190-0161
JOBS Components and Activities

This rule contains definitions of the components and activities of the JOBS program. When used in this division of rules as defined in this rule, the terms appear in italics.

(1) Assessment: An activity of the program entry component that involves gathering information to identify the strengths, interests, family circumstances, status in the JOBS Program, and vocational aptitudes and preferences of the client and to mutually determine an employment goal, the level of participation of the client in the JOBS Program, and which support services are needed.

(2) Basic education: A component intended to ensure functional literacy for all JOBS clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED). The component is discussed in OAR 461-190-0171 and 461-190-0181.

(3) BASIS testing: An activity in the program entry component. The BASIS test establishes the functional literacy level of the client.

(4) Case plan (formerly also known as an employment development plan (EDP) — and also known as a personal plan or personal development plan): A written outline, developed by the client and case manager, with input from partners as appropriate, listing activities and goals for the client. The activities and goals are identified during the assessment and are intended to reduce the effect of barriers to the self sufficiency, employment, job retention, and wage enhancement of the client. The case plan also identifies the support service payments the Department will make to help the client complete the plan. Completing a case plan is an activity of the program entry component.

(5) Degree Completion Initiative (DCI): A component in which a limited number of TANF recipients may participate for up to 12 months to complete an educational degree at a two- or four-year educational institution as defined at OAR 461-190-0195(2)(b). This component is discussed at OAR 461-190-0195.

(6) English as a second language (ESL): An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(7) Job readiness: A component designed to prepare clients to compete in the local labor market. The sole activity is life skills.

(8) Job search: A component that focuses on clients looking for and obtaining employment. It is designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual job search. The component is discussed in OAR 461-190-0201.

(9) Job skills training: A component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area. The component and activity are both called job skills training.

(10) JOBS Plus program (JOBS Plus): A component that provides TANF clients with on-the-job training and pays their benefits as wages. See the rules at OAR 461-190-0401 and following.

(11) Life skills: The activity of the job readiness component. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(12) Microenterprise: A component in which the client is self-employed in a sole proprietorship, partnership, or family business that has fewer than five employees and has capital needs no greater than $35,000.

(13) On-the-job training (OJT): A component and activity in which a client works for an employer for a contracted period. The employer trains the client and is reimbursed by the Department, usually at 50 percent of the wages of the participant, for those training costs.

(14) Program entry: The component that includes all the activities that prepare a client to actively participate in the JOBS program. Program entry activities are assessment, BASIS testing and writing the initial case plan.

(15) Sheltered work or supported work: A component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(16) UN work program: A component in which TANF clients work in unsubsidized employment and may also participate in another JOBS work site training activity.

(17) Vocational Training: A component of the JOBS Program that provides JOBS participants with access to specific vocational training that will lead to a career with an appropriate wage level and opportunity for employment.

(18) Work experience: A component in which the client works without pay at a job site to develop good work habits and basic vocational skills that enhance the likelihood the client will become employed. Work experience is available through private for-profit businesses, nonprofit organizations or public agencies.

(19) Work supplementation: Up to six months of work-site training provided by an employer. The component and activity are both called work supplementation. In work supplementation, the Department subsidizes the wages of the participant by providing up to $200 per month to the employer.

Stat. Auth.: ORS 411.060 & 418.100
Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 27-1993(Temp), f. & cert. ef. 11-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 21-2003(Temp), f. 8-29-03, cert. ef. 9-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 25-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-190-0195
Degree Completion Initiative Component

(1) The Degree Completion Initiative (DCI) assists TANF parents who are undergraduates to complete their education at a two- or four-year educational institution. DCI is a work-attached component of the JOBS program for certain TANF clients. A participant in the DCI component (participant) receives TANF cash assistance as well as support services provided through the JOBS program. JOBS support services does not pay for the cost of tuition, fees, books, or supplies associated with enrollment by a participant at an educational institution.

(2) The following definitions apply to DCI:

(a) “DCI” refers to Degree Completion Initiative.

(b) “Educational institution” refers to any post-secondary educational institution approved or accredited by the Northwest Commission on Colleges and Universities, by its regional equivalent, or by the appropriate official, department, or agency of the state or nation in which the institution is located and which is:

(A) A two- or four-year college or university; or

(B) A community college.

(c) “Participant” refers to a participant in the DCI component of the JOBS program.

(3) The number of participants at any time may not exceed one hundred households receiving TANF.

(4) Applying for DCI; Waiting List:

(a) A parent who is applying for or receiving TANF may apply for DCI by completing and signing the DCI application and submitting it to the Department. The application and other documentation required by this rule must be submitted to Department of Human Services JOBS Unit (DCI), 2nd Floor, 500 Summer Street NE E48, Salem, Oregon 97301.

(b) The Department will follow the following procedure for DCI applications received by the Department:

(A) For applications received prior to November 1, 2005, the Department will select participants in a random selection process of applicants, subject to the priority established in paragraph (E) of this subsection. The number of participants selected may not exceed the cap established in section (3) of this rule. The Department will notify all selected applicants who qualify that they have been selected to participate.

(B) For applications received prior to November 1, 2005, the Department will create a waiting list of applicants from the applicants who are not selected for participation in the random selection held pursuant to paragraph (A) of this subsection. The waiting list will be created through a random selection process in which the first application selected will be first on the waiting list. The Department will notify applicants that they have been placed on the DCI waiting list.

(C) For applications received on or after November 1, 2005, the Department will add applicants to the waiting list created pursuant to paragraph (B) of this subsection in the order of the date and time the completed application is received by the Department. The Department will notify applicants that they have been placed on the waiting list.

(D) When an opening in DCI becomes available, the Department will notify the next applicant on the waiting list.

(E) The priority population for the first 100 DCI slots will be applicants who are undergraduates and who require 12 months or less to complete a degree at an educational institution.

(F) If the department does not have 100 DCI slots filled, applications will be open to applicants who are undergraduates and who require between 13 and 24 months to complete a degree at an educational institution. Prior to November 1, 2005, a random selection process will be used if there are too many applicants in this category for the remaining slots available.

(c) The Department will inform each applicant for DCI who does not qualify or no longer qualifies for placement on the waiting list.

(5) Selection Requirements:

(a) A DCI applicant must meet the financial and nonfinancial eligibility requirements for TANF.

(b) Subject to the priority established by paragraph (4)(b)(E) of this rule, a DCI applicant must demonstrate that they are an undergraduate who requires 24 months or less to complete a degree at an educational institution.

(c) A DCI applicant who is not applying for or receiving TANF at the time of selection may not participate in DCI or remain on the waiting list.

(d) A DCI applicant notified by the Department of his or her selection to participate in DCI must provide to the Department within 60 days of the date the notification is sent documentation that he or she has been accepted for full-time attendance into or is enrolled full-time at an educational institution. An applicant who does not provide this documentation within 60 days is not eligible to participate in the DCI component. This deadline may be extended beyond 60 days in special circumstances beyond the control of the client.

(6) Requirements of Participants; Limitations:

(a) A participant must provide documentation to the Department quarterly, or following completion of each academic term at the educational institution, that the participant is making satisfactory academic progress, as defined by the educational institution, toward a degree.

(b) A participant who does not provide the documentation required by subsection (6)(a) of this rule, or who is not making satisfactory academic progress as defined by the educational institution, is not eligible to continue to participate.

(c) A participant must attend classes full-time as defined by the educational institution, unless there is good cause (see OAR 461-130-0327) to limit attendance to less than full-time.

(d) Unless there is good cause (see OAR 461-130-0327) for not attending year round, a participant must either:

(A) Attend classes year round, including during the summer if classes are offered by the educational institution; or

(B) If not attending classes year round, participate in work experience related to the field of study of the participant when not attending classes.

(e) A participant must provide the Department, either verbally or in writing, with attendance information at least once per month.

(f) Eligibility for DCI is limited to 12 months and may not be extended.

(g) Upon completing the last semester or term of the educational program of the participant, the participant must engage in work preparation activities, which may include resume preparation, employment research, interviews, work experience, and other activities related to job placement.

(h) The following requirements apply to a participant who is required to participate in the JOBS program:

(A) A mandatory participant who does not attend classes year round may be required to participate in other activities of the JOBS program.

(B) A mandatory participant found to be ineligible to participate in DCI must meet the participation requirements of the JOBS program.

(i) A participant may not simultaneously receive services from both the ERDC-SBG program and from the TANF or JOBS program.

(j) Except as provided in subsection (6)(k) of this rule, a participant must remain eligible for TANF: if the participant becomes ineligible for TANF, the participant is ineligible for DCI.

(k) If a participant becomes temporarily ineligible for TANF during a period of four or fewer months due to income from a paid work experience, the applicant may retain their DCI slot when school resumes if the participant meets all of the following requirements:

(A) The time of the participant in DCI will be no longer than 12 months.

(B) The participant regains TANF eligibility.

(C) DCI is still an appropriate activity for the participant.

Stat. Auth.: ORS 411.060, 418.100
Stats. Implemented: ORS 411.060, 418.100
Hist.: SSP 15-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-190-0211
Standards for Support Service Payments

(1) The Department helps individuals comply with their case plans by providing payments for child care, housing, transportation, and other needs to make participation in required activities successful. These payments are provided for costs directly related to participation in activities, for costs necessary to obtain and retain a job, and for enhancing wages and benefits. In approving JOBS support service payments, the Department must consider lower-cost alternatives. It is not the intent of the Department or of this rule to supplant Department funding with other funding that is available in the community. It is the Department’s expectation that case managers and clients will work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.

(2) Support service payments must be authorized in advance and are subject to the limitations of this rule. The following standards apply to support service payments.

(3) Subject to the limitations of state funding, JOBS payments for support service will be made available to an individual if all of the following are true:

(a) The individual is one of the following:

(A) A TANF applicant or recipient;

(B) A recipient in the Assessment program;

(C) A minor parent who has returned to the minor's parent's home in the last 40 days, if the move caused the client to become ineligible for TANF.

(D) A TANF client participating in diagnosis, counseling, or treatment programs for substance abuse or mental health.

(E) A non-citizen who is ineligible for TANF, who is legally able to work in the United States, and who has a child receiving TANF.

(F) A person disqualified from the TANF program for failure to comply with the child-support related requirements of OAR 461-120-0340 and 461-120-0345.

(G) A person eligible for transition benefits and services under OAR 461-190-0241.

(H) A person currently receiving TA-DVS benefits.

(I) A non-custodial parent of a child receiving TANF benefits, if both are residents of Oregon.

(b) The individual has agreed to participate in a JOBS activity as specified in the individual's case plan.

(4) Denials and Reductions The Department may reduce, close, or deny in whole or in part an individual's request for a support service payment in the following circumstances:

(a) If the individual is disqualified for failing to comply with a case plan, unless the payment in question is necessary for the client to comply with his or her case plan.

(b) If the purpose for the payment is not related to the individual's case plan.

(c) If the client disagrees with a support service payment offered or made by the Department as outlined in the client's case plan.

(5) Required Verification:

(a) The Department may require the individual to provide verification of a need for the support service prior to approval and issuance of payment if verification is reasonably available.

(b) The Department may require the individual to provide verification of costs associated with a support service if verification is reasonably available.

(6) Child Care Payments for child care are authorized, as limited by OAR 461-160-0040, if necessary to enable the individual to participate in JOBS program activities. If authorized, payment for child care will be made for:

(a) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150, except that the cost of child care may be paid up to the monthly maximum when children are in care less than 158 hours per month; and

(A) Appropriate care is not accessible to the individual at the hourly rate; or

(B) The individual is a teen parent using on-site care while attending education activities.

(b) The minimum hours necessary, including meal and commute time, for the individual to participate in JOBS activities or to obtain and maintain employment.

(7) Child care payments may be provided when individuals are not participating in activities of the JOBS program if necessary for them to retain their provider. Only the minimum amount necessary to maintain the child care slot with the provider may be covered as established in OAR 461-155-0150. Not more than 30 days between scheduled JOBS activities may be covered.

(8) Housing and Utilities In addition to payments for basic living expenses provided in OAR 461-135-0475, payments may be provided to secure or maintain housing and utilities in the following situations:

(a) To prevent an eviction or utility shut-off, to secure housing in order to find or maintain employment or to participate in activities listed in the individual's case plan. Payment is available when all the following are true:

(A) The individual cannot make a shelter or utility payment due to lack of assets.

(B) The lack of assets did not result from a JOBS or Child Support disqualification, a reduction due to an IPV recovery, overpayment recovery (other than administrative error), or failure by the individual to pay shelter or utility expenses when funds were reasonably available.

(C) The individual's case plan addresses how subsequent shelter or utility payments will be made.

(b) The shelter need results from domestic violence and all the following are true:

(A) The individual is not eligible for TA-DVS.

(B) The individual will be able to pay all subsequent shelter costs, either through the individual's own resources or through other resources available in the community.

(C) The individual's case plan addresses how subsequent shelter costs will be paid.

(c) For clients who are in the Assessment program or are applying for a payment under section (6) of this rule, the Department will make payments if the client meets the eligibility criteria in section (9) of this rule. A client who receives a TANF grant is expected to meet the housing and utility expenses out of the money received each month in the TANF grant. Therefore, for clients who receive a TANF grant, the Department may make payments on a case-by-case basis as appropriate if the client otherwise meets the JOBS support service payment eligibility criteria of this section.

(9) Transportation The Department will provide payments for transportation costs incurred in travel to and from JOBS activities. Payment is made only for the cost of public transportation or the cost of vehicle insurance, repairs, and fuel for a personally owned vehicle. The Department will not authorize payment for repair of a vehicle owned by an individual who is not in the TANF filing group. Payments are subject to the following considerations:

(a) Payments for public transportation are given priority over payments for a privately owned vehicle.

(b) Payment for a privately owned vehicle is provided if the client or driver has a valid license and either of the following is true:

(A) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available.

(B) Public transportation is available but is more costly than the cost of car repair or fuel.

(10) Other Payments The Department will provide payments for other items that are directly related to participation in JOBS activities. Payments under this section may be authorized for:

(a) Reasonable accommodation of a client's disability.

(b) Costs necessary in obtaining and retaining a job or enhancing wages and benefits, such as:

(A) Clothing and grooming for participation in JOBS activities or job interviews.

(B) Moving expenses necessary to accept employment elsewhere.

(C) Books and supplies for education needs.

(D) Tools, bonding, and licensing required to accept or retain employment.

(11) Students Receiving Financial Aid Authorization for payments for students in vocational training who receive financial aid is subject to the following conditions:

(a) A student whose financial aid consists solely of student loans is not required to use any of that financial aid for support services.

(b) Support service payments are not authorized for services specifically covered by federal or state financial aid other than student loans.

(c) Students whose financial aid consists of a combination of loans and grants may be required to pay for support services from any grant money remaining after payment of tuition, fees solely related to the institution where the individual attends, books, and supplies (applying first the loan and then any grants) if the financial aid award letter specifically permits this use of funds.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060 & 418.100
Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-190-0241
Transition Services; JOBS

(1) A client who becomes ineligible for the TANF program or the Assessment program because of an increase in earned income is eligible for transition benefits and services for 12 months upon meeting the criteria in OAR 461-190-0211 for receiving support services in the JOBS program. The total cost of JOBS support service payments may not exceed $1,000 for the duration of the 12-month period. For clients whose eligibility ends for reasons other than income from new employment, the benefits and services are limited to completing any JOBS activity in progress at the time program eligibility ends.

(2) The transition period begins on the date determined by the following:

(a) For clients participating in an OJT activity, the transition period begins:

(A) When TANF benefits end because of earned income, if there are three or fewer months left in the OJT contract.

(B) Three calendar months before the end of the OJT contract, if TANF benefits end because of the level of earned income when more than three months remain in the contract.

(b) For clients participating in a work supplementation activity, the transition period begins when the wage subsidy (grant diversion) to the employer ends.

(c) For all other clients, the transition period begins when TANF or Assessment program benefits end.

Stat. Auth.: ORS 411.060 & 411.816
Stats. Implemented: ORS 411.060
Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 23-1991(Temp), f. 10-31-91, cert. ef. 11-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 25-1998, f. 12-28-95, cert. ef. 1-1-98; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0301
Definitions

For purposes of OAR 461-195-0301 to 461-195-0350, the following definitions shall apply:

(1) "Action" means an action, suit or proceeding.

(2) "Applicant" means an applicant for assistance.

(3) "Assistance" means moneys for a recipient's needs and for the needs of other individuals living with the recipient whom the recipient has an obligation to support which are paid by the Department or by a prepaid managed care health services organization for services provided under contract pursuant to ORS 414.725 either directly to the recipient or to others for the benefit of the recipient. Assistance includes both cash and medical assistance. The medical assistance must be directly related to the personal injury. Assistance does not include Food Stamp benefits. Assistance is received by the recipient on the date of issuance of a check for cash assistance and the date of service for medical assistance, regardless of the actual payment date by the Department or the prepaid managed care health services organization.

(4) "Claim" means a legal action or a demand by, or on behalf of, a recipient for damages for or arising out of a personal injury which is against any person or public body, agency or commission other than the State Accident Insurance Fund Corporation or Workers' Compensation Board.

(5) "Compromise" means a compromise between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

(6) "Judgment" means a judgment in any action or proceeding brought by a recipient to enforce the claim of the recipient.

(7) "Net settlement" means the amount of the judgment, settlement, or compromise to which the lien attaches, as follows: the amount of the judgment, settlement, or compromise, minus the attorney fees and costs in OAR 461-195-0305(3), and minus personally incurred medical costs (in OAR 461-195-0305(4)) and personal injury protection (PIP – see ORS 742.520). Net settlement is the amount that is available for release or compromise of lien pursuant to OAR 461-195-0325.

(8) "Personal injury" means a physical or emotional injury to an individual including but not limited to assault, battery, or medical malpractice arising from such physical or emotional injury.

(9) "Prepaid managed care health services organization" means a managed health, dental or mental health care organization that contracts with the Department on a prepaid basis under the Oregon Health Plan pursuant to ORS 414.725. Prepaid managed care health organizations may be dental care organizations, fully capitated health plans, mental health organizations, physician care organizations, or chemical dependency organizations.

(10) "Recipient" means an individual who receives assistance or whose needs are included in a public assistance grant.

(11) "Settlement" means a settlement between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0100; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0303
Personal Injury Claim

(1) Medical assistance applicants and recipients are required, as a condition of eligibility, to assign to the Department any rights to payment for medical care from any third party and, once they receive assistance, to assist the Department in pursuing any third party who may be liable for medical care or services paid by the Department, including health services paid for pursuant to ORS 414.705 to 414.750.

(2) For all programs, the existence of a claim for damages for personal injuries does not make recipients ineligible for program benefits. For all programs except FS, the Department will file a lien on the claim.

(3) If a recipient fails to pursue such a claim, after the Department's Personal Injury Liens staff determine that a claim should be pursued, the Department shall apply the penalties in OAR 461-120-0330 unless good cause is established per OAR 461-120-0350.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610
Stats. Implemented: ORS 411.620, 411.630, 411.632, 411.635 & 411.640
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-195-0300; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0305
Lien of the Division

(1) Whenever a recipient has a claim for damages for a personal injury, the Department shall have a lien upon the amount of any judgment in favor of a recipient or amount payable to the recipient under a settlement or compromise as a result of that claim for all assistance received from the date of the injury to:

(a) The date of satisfaction of the judgment favorable to the recipient; or

(b) The date of the payment under the settlement or compromise.

(2) The person or public body, agency or commission bound by the judgment, settlement, or compromise shall be responsible for immediately informing the Department's Personal Injury Liens Unit when a judgment has been issued or a settlement or compromise has been reached so that the exact amount of the Department's lien may be determined. For the purposes of this rule, immediately means within ten calendar days. If the Department is not timely notified, the 180 day limitation in ORS 416.580(1) does not begin to run until the Department's Personal Injury Liens Unit has actual notice of a settlement, compromise, or judgment.

(3) The lien will not attach to the amount of any judgment, settlement, or compromise to the extent of the attorney fees, costs and expenses which the Recipient incurred in order to obtain that judgment, settlement, or compromise.

(4) The lien will not attach to the amount of any judgment, settlement, or compromise to the extent of medical, surgical and hospital expenses personally incurred by such recipient on account of the personal injury giving rise to the claim, for which assistance was not provided or paid. For purposes of OAR 461-195-0301 to 461-195-0350, personally incurred expenses are limited to those expenses not covered by the Department, and for which the client is personally liable at the time of judgment, settlement, or compromise.

(5) The Department's lien must be satisfied or specific approval must be given by the Department's Personal Injury Liens Unit's staff before any portion of the claim judgment, settlement, or compromise is released to the recipient. The Department shall have a cause of action against any person or public body, agency or commission bound by the judgment, settlement, or compromise who releases any portion of the claim judgment, settlement, or compromise to the recipient before meeting this obligation.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0105; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0310
Notice of Claim or Action by Applicant or Recipient

(1) An applicant for or recipient of assistance who has a claim for a personal injury or begins an action to enforce such claim, or the attorney or authorized representative (as defined at OAR 461-115-0090) for the applicant or recipient, is required to notify the Department and the prepaid managed care health services organization of the recipient, if the recipient is receiving services from the organization, within ten days of initiating that claim or action, unless the action was initiated prior to the application for assistance.

(a) If the action was initiated prior to the application for public assistance, the applicant must notify the Department at the time of application.

(b) The notification must include the names and addresses of all parties against whom the action is brought or claim is made. A parent, guardian, foster parent or caretaker relative must make the notification on behalf of an injured minor or incompetent adult.

(2) Notification by an attorney or authorized representative for an applicant or recipient or other person required to provide notification must be sent to the Personal Injury Liens Unit, Office of Payment Accuracy and Recovery, Department of Human Services, either by mail or fax.

(3) The mailing address for the Personal Injury Liens Unit is: Personal Injury Liens Unit, PO Box 14512, Salem OR 97309-0416.

(4) The Personal Injury Liens Unit's fax number is (503) 378-2577 and telephone number is (503) 947-9970.

(5) If an applicant for or recipient of assistance fails to give the notification as required by this rule, the Department or the prepaid managed care health services organization of the recipient, if the recipient is receiving services from the organization, will have a cause of action under ORS 416.610 against the recipient for amounts received by the recipient pursuant to a judgment, settlement, or compromise to the extent that the Department or the prepaid managed care health services organization could have had a lien against such amounts had such notice been given. At least 30 days prior to commencing an action under ORS 416.610, the Personal Injury Liens Unit and the prepaid managed care health services organization, if any, must consult with each other.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.620 & 416.510 - 416.610
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0110; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0315
Notice of Determination of Lien by Division

Where the Department determines that it has a lien pursuant to OAR 461-195-0305, the Department shall:

(1) Notify the recipient of the Department's determination;

(2) File a notice of lien with the county recording officer as provided in ORS 416.550(a); and

(3) Send, by registered or certified mail, a certified copy of the Notice of Lien filed pursuant to section (2) of this rule to each person or public body, agency or commission against whom the claim is made or action is brought by or on behalf of the recipient.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0115; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0320
Release of Lien for Future Medicals

(1) To qualify for consideration of a full or partial release of the State's share of the Department's lien (including the amount of an assigned lien) pursuant to ORS 416.600, the recipient must demonstrate, through documentation satisfactory to the Department, that:

(a) As a result of the personal injury for which the recipient has a claim, the recipient has a medical condition which will require future medical treatment;

(b) The nature of future medical treatment;

(c) The date on which the future medical treatment can reasonably be expected to occur;

(d) The anticipated cost of the future medical treatment;

(e) The amount of the settlement, compromise, or judgment awarded the recipient;

(f) Timely compliance by the recipient with the notification requirements; and

(g) Any other documentation requested by the Department.

(2) In considering a request for a full or partial release of a lien pursuant to ORS 416.600, the Department may take into account:

(a) Whether the recipient has provided the documentation required by section (1) of this rule;

(b) Whether the future medical treatment is likely to occur in the near future. The Department will evaluate this factor in light of the nature and certainty of the type of medical treatment anticipated;

(c) Whether the amount of the settlement, compromise, or judgment is sufficient to pay the future medicals and all or part of the Department's lien;

(d) Whether the recipient has or is likely to have another source for payment of the future medical expenses;

(e) The effect, if any, of the requested release on the continuing eligibility for future medical or public assistance of the recipient;

(f) Any other factor deemed relevant by the Department, including information received from a prepaid managed health care services organization;

(g) In the event the recipient is a minor, the provisions of OAR 461-195-0350 may apply.

(3) In no case will the Department consider a request for a partial or full lien release pursuant to ORS 416.600 unless the recipient and the liable third party have entered into a final, binding settlement or compromise agreement or the recipient has received a final judgment. In every case, the lien amount that represents the federal share of Title XIX or Title XXI payments must be repaid to the federal government and shall not be subject to partial or full lien release.

Stat. Auth.: ORS 416.510 - 416.600
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060
Hist.: AFS 14-1995, f. 6-30-95, cert. ef. 7-1-95; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0321
Assigning a Lien to a Prepaid Managed Care Health Services Organization

(1) The Department may assign a lien in accordance with ORS 416.510 to 416.610 to a prepaid managed care health services organization (organization) for assistance in the amount of covered health services (as defined in Oregon Health Plan Rules, OAR Division 410-141 and the General Rules, OAR Division 410-120, or other Department rules establishing covered medical assistance) costs incurred by a recipient on account of a personal injury that were actually paid for by the organization:

(a) During a period for which the Department paid the organization a capitation or enrollment fee pursuant to ORS 414.725; and

(b) On account of the personal injury for which the recipient had a claim.

(2) The assignment described in section (1) of this rule will be made only if the organization makes a timely request for assignment to the Department. A timely request is made if the Department's Personal Injury Liens Unit receives the request not more than 30 days from the date the organization receives notice of a claim or action under OAR 461-195-0310.

(3) The amount of the lien that may be assigned does not include amounts excluded from a lien according to OAR 461-195-0305(3) and (4), 461-195-0320, or 461-195-0350.

(4) For purposes of ORS 416.510 to 416.610, assignment of the lien establishes the organization as a designee of the Department in relation to the lien, pursuant to ORS 416.540(5), which designation shall include the following:

(a) As the Department's designee, the organization is subject to these rules in the pursuit of its assigned lien and any actions taken by the organization to settle, compromise or release its lien.

(b) In cases where the Department and the organization share a joint lien, the organization shall copy the Personal Injury Liens Unit on all documentation related to the assigned lien, including communications with the person or public body, agency or commission against whom a claim is made or an action is brought in relation to settlement, compromise or release of the assigned lien. This requirement can be met by listing the Personal Injury Liens Unit on the "cc" portion of the documentation or certificate of service, and sending a copy to the Personal Injury Liens Unit when the document is sent or filed. In other cases, the organization shall make such documentation available to the Department for review upon request.

(c) The Department may require the use of forms and procedures related to the assignment of liens and the efficient administration of these rules, to minimize redundancy in communications with a recipient and the parties to an action.

(5) The form of notice of lien that may be assigned to an organization shall comply with ORS 416.560, with the organization assigned as the designee. Upon receiving assignment of lien from the Department, the organization shall follow the procedure to perfect such lien established in ORS 416.550. An organization to which the Department has assigned a lien must notify the Department no later than 10 calendar days after filing notice of the lien.

(6) An organization to which a lien is assigned is solely responsible for taking all necessary actions to perfect its lien and to document actions taken to recover under the lien. Consequences for failure to comply with applicable requirements for perfecting the lien and recovering under the lien shall be the sole responsibility of the organization and shall not prevent the Department from recovering amounts due the Department pursuant to its lien authority.

(7) Immediately after a judgment has been rendered in favor of a recipient or a settlement or compromise has been agreed upon, the person or public body, agency or commission bound by such settlement, compromise, or judgment is required to notify the Department.

(a) If the organization receives such notification on an assigned lien, the organization shall provide a copy of such notification to the Department within 10 calendar days of receipt of the notification.

(b) After such notification, the Department must send a statement of the amount of the lien to such person or public body, agency or commission by registered mail or by certified mail with return receipt. This statement should also include information provided by the organization that has properly perfected its assigned lien.

(8) A lien assigned by the Department to an organization is subject to release or compromise as described in OAR 461-195-0325.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0325
Release or Compromise of Lien

(1) If the Department has not assigned a lien to a prepaid managed care health services organization (organization) or if the organization failed to perfect its assigned lien, the Department may release or compromise its lien and distribute collections under its lien as follows:

(a) To the Department, an amount equal to the State share of Department's medical assistance expenditures for the recipient. The State share means the amount of state funds provided in relation to Title XIX or Title XXI payments.

(b) To the federal government, the federal share of the State medical assistance expenditures. The federal share means the amount of federal financial assistance claimed by the State in relation to Title XIX or Title XXI payments that the State must repay to the federal government pursuant to applicable law.

(c) To the recipient, any remaining amount after distributions provided for in subsections (a) and (b) of this section; except that if the lien amount is more than 75 percent of the net settlement, the Department may distribute to the recipient 25 percent of the net settlement. The amount distributed to the recipient must be treated as income or resources consistent with applicable law.

(2) If the Department has assigned a lien to a prepaid managed care health services organization (organization) and the organization properly perfected its lien, the Department and the organization may release or compromise and distribute collections under the liens as follows:

(a) To the Department, an amount equal to the State share of medical and cash Assistance and the federal share of medical assistance expenditures for the recipient.

(b) The Department will reimburse to the federal government, the federal share of the State medical assistance expenditures for which federal match was claimed by the Department.

(c) To the recipient, the amount remaining after the distributions provided for in subsections (a) and (b) of this rule; except that if the lien amount is more than 75 percent of the net settlement, the Department may distribute to the recipient 25 percent of the net settlement. The amount distributed to the recipient must be treated as income or resources consistent with applicable law.

(d) To the organization, the expenditures subject to the lien by the organization except as otherwise provided in subsection (c) of this section. If the lien amount is more than 75 percent of the net settlement, the Department may distribute to the recipient 25 percent of net settlement before making a distribution to the organization. If the organization holds the only lien through assignment, and if the lien amount is more than 75 percent of the net settlement, the organization must distribute to the recipient 25 percent of the net settlement.

(e) As between the Department and the organization after the distributions provided for in subsections (a), (b), (c) and (d) of this rule, ORS 416.540(6) requires that the Department's lien must be satisfied first.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060
Hist.: AFS 18-1991, f. 9-30-91, cert. ef. 10-1-91; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

461-195-0350
Procedure Where Injured Recipient is a Minor

(1) Where the injured recipient is a minor, the Department may petition the court having probate jurisdiction in the county in which the minor lives to determine the sum that will be needed for the minor's complete physical rehabilitation. Except to the extent that of the federal share of the amount of a lien, the lien of the Department, including any lien assigned to a prepaid managed care health services organization, shall not attach to the amount of any sum needed for the rehabilitation.

(2) If the recipient is a minor, no payments to the Department in satisfaction of its lien and no payments to the recipient under a judgment, settlement, or compromise may be made until a hearing has taken place and the court has issued its order under ORS 416.590.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020 & 411.060
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0150; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06

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

Adm. Order No.: SPD 18-2005(Temp)
Filed with Sec. of State: 12-20-2005
Certified to be Effective: 12-21-05 thru 6-1-06
Notice Publication Date:
Rules Adopted: 411-030-0055
Rules Amended: 411-030-0020, 411-030-0033, 411-030-0040, 411-030-0050, 411-030-0070
Subject: Several definitions were updated or deleted. A definition for "natural supports" was added. In OAR 411-030-0033, eligibility criteria for in-home services, as opposed to relative adult foster home services is clarified. In OAR 411-030-0040, a client whose needs are met through their natural support system will not be eligible for in-home services. In OAR 411-030-0050 a client receiving a shelter exception cannot also receive a hardship shelter allowance. In OAR 411-030-0055, guidelines for authorizing service plan-related transportation are established. In OAR 411-030-0070, the minimal assistance level in 24 hour availability was changed to 60 hours from 50 hours. Service plans with full time live-in Homecare Workers must include a minimum of 60 hours of 24-hour availability. In 411-030-0070, eligibility for 24 hour availability is clarified. Hours for ADL and self-management tasks are based on client service needs up to the maximum time allotments indicated in rule. The task "medication management" was changed to "medication and oxygen management."
Rules Coordinator: Lisa Richards—(503) 945-6398

411-030-0020
Definitions

As used in these rules:

(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) "Architectural Modifications" means any service leading to the alteration of the structure of a dwelling to meet a specific service need of the client.

(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 the elderly and possibly the disabled 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) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any activity of daily living (ADL). This definition includes the use of service animals, general household items or furniture to assist the individual in performing an ADL.

(5) "Case Manager" means a person who ensures client entry, assessment, service planning, service implementation, and evaluation of the effectiveness of the services.

(6) "Client" means the individual eligible for in-home support services.

(7) "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.

(8) "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 care to clients of the Department or Area Agency on Aging.

(9) "Cost Effective" means being mindful of resources when providing choices to adequately meet a client's service needs. Those choices consist of the available services published on the Fiscal and Policy Analysis (FPA) rate schedule for SPD programs and the utilization of assistive devices.

(10) "Department" means the Department of Human Services, Seniors and People with Disabilities (SPD).

(11) "Exception" means an approval for a monthly payment or rate granted to a specific client in their current residence (or in the proposed residence identified in the exception request) that exceeds the rates on the SPD published rate schedule. The approval is based on the exceptional service needs of the client and is contingent upon meeting the requirements in OAR 411-027-0000 and OAR 411-027-0050. The term "exception" is synonymous with "exceptional rate" or "exceptional payment."

(12) "Full Assistance" as used in OAR 411-030-0070 means the client is unable to do any part of an activity of daily living or task and that task must be done entirely by someone else.

(13) "Homecare Worker (HCW)" means a provider, as described in OAR chapter 411, division 031, who is directly employed by the client and provides either hourly or live-in services to eligible clients. Homecare Workers also include providers in the Spousal Pay Program.

(14) "Hourly Services" means the in-home support services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(15) "In-home support services" means those services that assist a client to stay in his or her own home.

(16) "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 employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements. 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.

(17) "Minimal Assistance" as used in OAR 411-030-0070 means the client is able to perform the majority of a task, but requires some assistance.

(18) "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 that are not paid for by the Department.

(19) "Oregon Project Independence" (OPI) means the program of in-home support services defined in OAR chapter 411, division 032.

(20) "Provider" means the individual who actually renders the service.

(21) "Registered Nurse Plan of Care" means a document completed by an RN identifying the tasks which must be provided to meet the client's assessed needs.

(22) "Respite", as used in OAR 411-030-0080, means securing a paid temporary replacement worker to perform the authorized duties normally performed by the Spousal Pay Program provider, in order to allow the Spousal Pay Program provider interim relief from providing care to the client.

(23) "Self-Management" 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.

(24) "Service Need" means those functions or activities that the client requires assistance with, as identified in OAR chapter 411, division 015.

(25) "Service Priority" means the order in which Department clients are found eligible for nursing home care, Home and Community-Based Services waiver programs, the Spousal Pay Program, and Oregon Project Independence.

(26) "Substantial Assistance" as used in OAR 411-030-0070 means a client can perform only a small portion of a task and requires assistance with the majority of a task.

(27) "Twenty-Four Hour Availability" means the availability and responsibility of an employee 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 employee and are exempt from federal and state minimum wage and overtime requirements.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 5-1987, f. & ef. 7-1-87; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06

411-030-0033
Program Scope

(1) In-Home Support Services are designed to provide essential supportive services that enable an individual to remain in his or her own home. Services may be provided through the Home and Community-Based Services waiver, the Independent Choices Program or through the State-funded Spousal Pay Program. The services range from assistance with household tasks to assistance with activities of daily living. The extent of the services may vary from a few hours per week to full-time. Live-in services may be an option depending on the program.

(2) In-home support services may be provided through the Home and Community-Based Services waivered In-Home Services Program, Spousal Pay Program, Independent Choices Program, or Oregon Project Independence Program.

(3) A client residing in any of the following living arrangements may not be considered for the Home and Community-Based Services waivered In-Home Services Program:

(a) The client resides in the home of the provider who is proposed to be paid by the Department. The provider has their name on the official lease, mortgage, deed or property manager's rental agreement.

(b) The client has an informal arrangement to rent a dwelling, or a portion of a dwelling, from relatives, and the intent of the client moving in was for the purpose of receiving care services.

(4) In the event the client's name is officially added to the property or the property manager's rental or lease agreement, the client may be considered for waivered in-home services.

(5) A residential setting must be licensed as a relative adult foster home, as described in OAR 411-050-0405, when a client moves in with or rents property from a relative for the purpose of receiving care services; and

(a) A relative or their spouse is the owner/leaser/renter of the home; and

(b) A relative or their spouse is proposed to be paid by the Department as the client's care provider; and

(c) The client is determined eligible for waivered services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06

411-030-0040
Eligibility Criteria

(1) In-home support services may be provided to those individuals who meet the established priorities for service as described in OAR chapter 411, division 015 and have been assessed to be in need of a service provided in OAR chapter 411, division 030. Payments for in-home support 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 can be considered or authorized only when such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the individual. An individual whose care needs are met by their natural supports will not be eligible for in-home support services. Service plans will be based upon the least costly means of providing adequate care.

(2) Clients served under the Home and Community Based Services waivered In-Home Services Program must meet the established priorities for service as described in OAR chapter 411, division 015 and be included in one of the following groups:

(a) Current recipients of OSIPM who reside in one of the living arrangements described in OAR 411-030-0033(3) and who are eighteen years of age or older;

(b) Eligible adults, eighteen and older, receiving TANF with MAA, MAF or Extended Medical benefits only when service is necessary to prevent nursing facility placement.

(3) To be eligible for the Home and Community-Based Services waivered In-Home Services Program, a client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency to provide those services authorized and paid by the Department.

(a) If, for any reason, the employment relationship between the client and provider is discontinued, an enrolled Homecare Worker or Contracted In-Home Care Agency must be employed within thirty calendar days for the client to remain eligible for the program.

(b) Following discharge from any facility or medical institution, the client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency within thirty calendar days.

(4) Separate eligibility for in-home support services exists for persons eligible for:

(a) Oregon Project Independence as defined in OAR chapter 411, division 032;

(b) Independent Choices as defined in OAR chapter 411, division 036; or

(c) Spousal Pay Program as defined in OAR 411-030-0080.

(5) Residents of licensed community-based care and nursing facilities are not eligible for in-home support services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-12-93, Renumbered from 411-030-0001; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06

411-030-0050
Case Management

(1) Assessment:

(a) The assessment process will identify the client's ability to perform activities of daily living, self-management tasks, and determine the client's ability to address health and safety concerns. The case manager will conduct this assessment in accordance with standards of practices established by the Department.

(b) The assessment will be conducted by a case manager or other qualified Department or Area Agency on Aging representative in the client's home, no less than annually, with a standardized assessment tool approved by the Department.

(2) Contract RN Assessment:

(a) Contract RN services are prior authorized by a Department or Area Agency on Aging case manager to provide:

(A) Nursing assessment and reassessment as appropriate;

(B) Medication review;

(C) Assignment of basic care tasks to a Homecare Worker; and

(D) Delegation of special tasks of nursing care to a Homecare Worker.

(b) Indicators of the need for RN assessment and monitoring include:

(A) Full assistance in cognition;

(B) Medical instability;

(C) Potential for skin breakdown or decubitus ulcer;

(D) Multiple health problems or frailty with a strong probability of deterioration; and

(E) Potential for increased self-care, but instruction and support for the client are needed to reach goals.

(c) Maximum hours for each contracted RN service will be established by the Department.

(3) Service Plan:

(a) The client and case manager, with the assistance of other involved individuals, will consider in-home service options as well as assistive devices, architectural modifications, and other community-based care resources to meet the service needs identified in the assessment process.

(b) The case manager has responsibility for determining client eligibility for specific services, presenting alternatives to the client, and assuring the cost effectiveness of the plan. The case manager will monitor the plan and make adjustments as needed.

(c) The client has the primary responsibility for choosing and, whenever possible, developing the most cost-effective service options, including the Client-Employed Provider Program and Contracted In-Home Care Agency services.

(d) The Service Plan payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the employee 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 or Spousal Pay Programs is prohibited.

(e) The Department will not pay the client for food and shelter expenses associated with employing a live-in provider.

(f) The Department may authorize a hardship shelter allowance for a Home and Community Based Services waiver client having a live-in provider on or after September 1, 1995, if one of the following conditions is met:

(A) The client will be forced to move from their current dwelling and his or her current average monthly rent or mortgage costs exceed current OSIP and OSIPM standards for a one-person need group as outlined in OAR 461-155-0250; or

(B) Service costs would significantly increase as a result of the client being unable to provide living quarters for a necessary live-in provider.

(g) The Department must not authorize a hardship shelter allowance for a waiver-eligible individual if that person is receiving a shelter exception under Medicaid Special Needs as defined in OAR 461-155-0660.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; 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 1-1988, f. & cert. ef. 3-1-88; SSD 6-1988, f. & cert. ef. 7-1-88; SSD 9-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 11-1989(Temp), f. & cert. ef. 9-1-89; SSD 18-1989, f. 12-29-89, cert. ef. 1-1-90; SSD 7-1990(Temp), f. & cert. ef. 3-1-90; SSD 16-1990, f. & cert. ef. 8-20-90; SSD 1-1992, f. & cert. ef. 2-21-92; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93, Renumbered from 411-030-0022; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06

411-030-0055
Service Plan-Related Transportation

(1) Service plan-related transportation (non-medical) may be prior-authorized for reasons related to an eligible individual's safety or health in accordance with a plan of care. Such services will be offered through local transportation authorities or by Homecare workers.

(2) Natural supports, volunteer transportation, and other transportation services available to the client will be considered a prior resource and must not be replaced with transportation paid by the Department.

(a) OMAP is a prior-resource for medical transportation to a physician, hospital, clinic or other medical service provider.

(b) The Department will not provide service plan-related transportation to obtain items that can be delivered by a supplier or sent by mail-order.

(3) Transportation must be prior authorized by the Case Manager and documented in the case record. Under no circumstances will any provider receive payment from the Department for more than the total number of hours or miles authorized by the Department in the Service Plan.

(a) Local transportation authorities will be reimbursed in accordance with their contract with DHS. Service transportation services provided by through local transportation authorities must be authorized by the Case Manager based on an estimate of a total count of one-way trips per month.

(b) Homecare Workers will be reimbursed according to the terms defined in their collective bargaining agreement when they use their own personal vehicle for service plan-related transportation. Transportation provided by HCWs must be based on an estimate of the monthly maximum miles required to drive to and from the destination(s) authorized in the service plan.

(c) It is prohibited to authorize reimbursement for travel to or from the Homecare Workers' place of work. The home of the eligible individual is considered the Homecare Worker's place of work.

(4) DHS is not responsible for any vehicle damage or personal injury sustained while using a personal motor vehicle for service plan-related transportation.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06

411-030-0070
Maximum Hours of Service

(1) Maximum Monthly Hours for Activities of Daily Living:

(a) The planning process will use the following limitations for time allotments for ADL tasks. Case Managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial or full). Hours authorized are based on the service needs of the individual.

(A) Eating: Minimal assistance — 5 hours; substantial assistance — 20 hours; full assistance — 30 hours;

(B) Dressing: Minimal assistance — 5 hours; substantial assistance — 15 hours; full assistance — 20 hours;

(C) Bathing and Personal Hygiene: Minimal assistance — 10 hours; substantial assistance — 15 hours; full assistance — 25 hours;

(D) Mobility: Minimal assistance — 10 hours; substantial assistance — 15 hours; full assistance — 25 hours;

(E) Bowel and Bladder: Minimal assistance — 10 hours; substantial assistance — 20 hours; full assistance — 25 hours;

(F) Cognition: Minimal assistance — 5 hours; substantial assistance — 10 hours; full assistance — 20 hours.

(b) If an individual requires full assistance in mobility and does not need the maximum hours for cognition, the unused cognition hours may be used to supplement the ADL total, if such hours are needed to meet detailed ADL service needs.

(c) For two-client households, each person's service needs are considered separately.

(d) Hours authorized for activities of daily living are paid at a rate established and published by the Department. Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(e) Hours for activities of daily living may only be authorized for an individual if that individual is assessed as needing assistance (assist, minimal assist, substantial assist or full assist) in that activity of daily living as defined in OAR chapter 411, division 015.

(2) Maximum Hours for Self-Management Tasks:

(a) The planning process will use the following limitations for time allotments for all services. Case Managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial or full). Hours authorized are based on the service needs of the individual.

(A) Medication and Oxygen Management: Minimal assistance — 2 hours; substantial assistance — 4 hours; full assistance — 6 hours;

(B) Transportation or Escort Services: Minimal assistance — 2 hours; substantial assistance — 3 hours; full assistance — 5 hours;

(C) Meal Preparation: Minimal assistance — Breakfast — 4 hours, lunch — 4 hours, supper — 8 hours; substantial assistance — breakfast —

8 hours, lunch — 8 hours, supper — 16 hours; full assistance — breakfast — 12 hours, lunch — 12 hours, supper — 24 hours;

(D) Shopping: Minimal assistance — 2 hours; substantial assistance — 4 hours; full assistance — 6 hours;

(E) Housecleaning: Minimal assistance — 5 hours; substantial assistance — 10 hours; full assistance — 20 hours.

(b) Rates paid will be established and published by the Department. When a live-in employee is present, these hours may be paid at less than minimum wage according to the Fair Labor Standards Act. Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(c) When two clients eligible for self-management task hours live in the same household, the assessed self-management need of each client will be calculated. Payment will be made for the higher of the two allotments and a total of four additional self-management hours per month to allow for the second client's specific needs.

(3) Twenty-Four Hour Availability:

(a) Payment for twenty-four hour availability will be considered only when the client employs a live-in Homecare Worker and requires this availability due to the following:

(A) The client requires minimal, substantial, or full assistance with ambulation and requires assistance with transfer (as defined in OAR chapter 411, division 015); or

(B) The client requires full assistance in Transfer or Elimination as defined in OAR chapter 411, division 015; or

(C) The client requires full assist in at least three of the eight components of Cognition (as defined in OAR chapter 411, division 015); and

(D) The client requires assistance with activities of daily living or self-management tasks at unpredictable times throughout most twenty-four hour periods.

(b) The number of hours allowed per month will have the following maximums:

(A) Minimal assistance — 60 hours;

(B) Substantial assistance — 110 hours;

(C) Full assistance — 159 hours.

(c) Service plans that include full-time live-in Homecare Workers will include a minimum of sixty (60) hours per month of 24-hour availability. When a live-in Homecare Worker is employed less than full time, the minimum hours will be pro-rated. Full-time means the live-in Homecare Worker is providing services to the client-employer seven (7) days per week throughout a calendar month.

(d) Rates for this availability will be established and published by the Department and paid at less than minimum wage according to the Fair Labor Standards Act and ORS 653.020(2). Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(4) Under no circumstances will any provider receive payment from the Department for more than the total amount authorized by the Department on the Service Plan Authorization Form.

(5) Authorized hours are subject to the extent of client need and the availability of funds. Case managers must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment and housing accommodations, which could reduce the client's reliance on paid in-home service hours.

(6) It is the intent of the Department to authorize paid in-home support services only to the extent necessary to supplement potential or existing resources within the client's personal support system.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SDSD 8-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; SDSD 3-2000, f. 4-11-00, cert. ef. 4-12-00; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06

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Adm. Order No.: SPD 19-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 12-29-05
Notice Publication Date: 11-1-05
Rules Amended: 411-015-0005, 411-015-0100
Subject: References to the General Assistance Program are being deleted from OAR 411-015-0100. Definitions of "Mental or Emotional Disorder" and "Substance Abuse Related Disorder" have been added to OAR 411-015-0005.
Rules Coordinator: Lisa Richards—(503) 945-6398

411-015-0005
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. This includes eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) "Alternative Service Resources" means other possible resources for the provision of services to meet the person's needs. This includes, but is not limited to, natural physical/social support systems, Risk Intervention services, Older Americans Act programs, or other community resources.

(3) "Assessment" for service eligibility means the process of evaluating the functional impairment levels including the individual's requirements for assistance or independence in performing activities of daily living, and determining nursing facility care. The Department requires use of the Client Assessment and Planning System (CA/PS) as the tool used to determine service eligibility and planning. When assessing an individual, the time frame reference for evaluation is how the person functioned during the thirty days prior to the assessment date, with consideration of how the person is likely to function in the thirty days following the assessment date.

(4) Assistance Types needed for activities of daily living include, but are not limited to the following terms:

(a) "Cueing" means giving verbal or visual clues during the activity to help the individual complete activities without hand-on assistance.

(b) "Hands-on" means a provider physically performs all or parts of an activity because the individual is unable to do so.

(c) "Monitoring" means a provider must observe the individual to determine if intervention is needed.

(d) "Reassurance" means to offer encouragement and support.

(e) "Redirection" means to divert the individual to another more appropriate activity.

(f) "Set-up" means getting personal effects, supplies, or equipment ready so that an individual can perform an activity.

(g) "Stand-by" means a person must be at the side of an individual ready to step in and take over the task should the individual be unable to complete the task independently.

(h) "Support" means to enhance the environment to enable the individual to be as independent as possible.

(5) "Assistance/Full Assistance" is defined for each activity of daily living as follows:

(a) Bathing/Personal Hygiene is comprised of two components. To be considered Assist, the individual must require Assistance in Bathing or Full Assistance in Hygiene. To be considered Full Assist, the individual must require Full Assistance in Bathing.

(A) Bathing means the activities of bathing and washing hair and, if needed, using assistive devices. Bathing includes the act of getting in and out of the bathtub or shower.

(i) Assist: The individual requires assistance from another person with bathing, even with assistive devices. This may include hands-on assistance for part of the task, cueing during the activity or stand-by presence for the duration of activity.

(ii) Full Assist: The individual requires at least one other person to provide bathing, even with assistive devices. This means hands-on assistance in all phases of the task.

(B) Personal Hygiene means the activities of shaving and caring for the mouth.

(i) Assist: The individual requires assistance from another person with personal hygiene, even with assistive devices. This may include hands-on assistance for part of the task, cueing during the activity or stand-by presence for the duration of the activity.

(ii) Full Assist: The individual cannot do personal hygiene, even with assistive devices, without the regular assistance of another person. This means hands-on assistance for all phases of the task.

(b) Cognition/Behavior means functions of the brain, which assist in orientation to person, place or time, decision-making, learning, memory, and behaviors, which may affect living arrangements and/or jeopardize safety of self or others. Evaluation of functional limitation without support is based on eight components. To be considered Assist, the individual must require Assistance in at least three of the eight components. To be considered Full Assist, the individual must require Full Assistance in at least three of the components.

(A) Adaptation means response to major changes in relationship to the individual's environment, such as the possibility of a change in living situation, death of significant other, etc.

(i) Assist: The individual requires reassurance with change. These are multiple occurrences, less than daily.

(ii) Full Assist: The individual requires constant support and reassurance or is unable to adapt to change. These occurrences are ongoing and daily.

(B) Awareness means accurate understanding of needs relating to health, safety, and welfare of the individual.

(i) Assist: The individual has difficulty understanding those needs, that must be met, requiring the assistance of another person.

(ii) Full Assist: The individual does not have the capacity to understand those needs.

(C) Danger to Self or Others means behaviors, other than wandering, that may be a danger to the individual (including self injury), or to those around the individual.

(i) Assist: At least monthly, the individual is disruptive or aggressive in a non-physical way, agitated, or sexually inappropriate. These behaviors are challenging and the individual can be verbally redirected.

(ii) Full Assist: The individual has had more than one episode of aggressive, disruptive, agitated, dangerous, or physically abusive behaviors directed at self or others, including sexual aggression. These behaviors are extreme, may be unpredictable, and necessitate intervention beyond verbal redirection, requiring a client specific behavioral care plan that all staff are trained to deliver.

(D) Demands on Others means behaviors, other than wandering, that negatively impact and affect living arrangements, providers or other residents.

(i) Assist: The individual's habits and emotional states limit the types of living arrangements and companions, but can be modified with individualized routines, changes to the environment e.g. roommates or non client specific training for the caregiver.

(ii) Full Assist: The individual's habits and emotional states can be modified only with a 24-hour specialized care setting or a client specific behavioral care plan that all staff are trained to deliver.

(E) Judgment means the ability to make informed decisions and conduct activities that affect the ability to function independently. This includes understanding the consequences of decisions that jeopardize the health, safety, and welfare of the individual.

(i) Assist: At least weekly, the individual needs protection, monitoring and guidance to make decisions.

(ii) Full Assist: The individual's decisions require daily intervention by another person.

(F) Memory means the ability to remember and appropriately use current information, which impacts the health, safety and welfare of the individual.

(i) Assist: The individual has difficulty remembering and using current information and requires reminding.

(ii) Full Assist: The individual cannot remember or use information and requires directions beyond reminding.

(G) Orientation means accurate understanding of person, place, and time as it relates to the ability of the individual to function independently.

(i) Assist: The individual is disoriented to person, place or time. These occurrences are episodic during the week but less than daily.

(ii) Full Assist: The individual is disoriented to person, place or time and such occurrences are daily.

(H) Wandering means moving about aimlessly, or elopement, without relationship to needs or safety.

(i) Assist: The individual wanders within the home or facility, but does not jeopardize safety.

(ii) Full Assist: The individual wanders inside or out and jeopardizes safety.

(c) Dressing/Grooming: This is comprised of two elements. To be considered Assist, the individual must require Assistance in Dressing or Full Assistance in Grooming. To be considered Full Assist the individual must require Full Assistance in Dressing.

(A) Dressing means the activities of dressing and undressing.

(i) Assist: The individual requires assistance from another person to do parts of dressing or undressing, even with assistive devices. This may include hands-on assistance for part of the task, cueing during the activity, or stand-by presence for the duration of the activity.

(ii) Full Assist: The individual must be dressed or undressed by another person, even with assistive devices. Hands-on assistance is required for every phase of dressing activity.

(B) Grooming means nail care and the activities of brushing and combing hair.

(i) Assist: The individual requires help to do part of the task, even with assistive devices.

(ii) Full Assist: The individual cannot do any part of the task, even with assistive devices.

(d) Eating means the activity of feeding and eating and may include using assistive devices.

(A) Assist: When eating, the individual requires another person to be immediately available and within sight. This requires hands-on feeding, hands-on assistance with special utensils, cueing during the act of eating, or monitoring to prevent choking or aspiration. This is a daily need or can vary if an individual's medical condition fluctuates significantly during a one-month period.

(B) Full Assist: When eating, the individual always requires one-on-one assistance for direct feeding, constant cueing, or to prevent choking or aspiration. This includes nutritional IV or feeding tube set-up by another person.

(e) Elimination: This is comprised of three components. To be considered Assist, the individual must require Assistance in at least one of the three components. To be considered Full Assist the individual must require Full Assist in any of the three components.

(A) Bladder means managing bladder care. This includes tasks such as catheter care, toileting schedule, monitoring for infection, and changing incontinency supplies.

(i) Assist: At least monthly, the individual requires assistance from another person, for parts of the activity, even with assistive devices or supplies, to manage dribbling, incontinence, catheter, or sheath changes.

(ii) Full Assist: The individual always requires another person for all phases of bladder care or catheter care.

(B) Bowel means managing bowel care. This includes tasks such as digital stimulation, toileting schedule, suppository insertion and enemas.

(i) Assist: At least monthly, the individual requires assistance from another person to manage incontinence, ostomy care or suppository insertion, even with assistive devices or supplies.

(ii) Full Assist: The individual always requires another person to provide all phases of bowel care.

(C) Toileting means the activity of getting to and from, and on and off the toilet (including bedpan, commode and urinal), cleansing after elimination or adjusting clothing, cleaning and maintaining assistive devices, or cleaning the toileting area after elimination because of unsanitary conditions that would pose a health risk. This does not include routine bathroom cleaning.

(i) Assist: At least monthly, the individual requires assistance from another person to perform any part of the task, even with assistive devices and supplies.

(ii) Full Assist: The individual always requires another person to manage all care.

(f) Mobility: This is comprised of two components, Ambulation and Transfer. In the Mobility cluster only, assistance is categorized into three levels. To be considered Minimal Assist, the individual must require Minimal Assistance in Ambulation. To be considered Substantial Assist, the individual must require Substantial Assistance with Ambulation or an Assist with Transfer. To be considered Full Assist, the individual must require Full Assistance with Ambulation or Transfer. Mobility does not apply to the activities of getting in and out of a motor vehicle or a bathtub/shower or on and off the toilet. When assessing an individual's inside mobility, consider how the person ambulates and transfers within their home or care setting.

(A) Ambulation means the activity of moving around both inside and outside, using assistive devices, if needed. Ambulation does not include exercise or physical therapy.

(i) Minimal Assist: The individual can get around inside with assistive devices, if needed, without the assistance of another person, but requires assistance from another person when outside or in an unfamiliar environment.

(ii) Substantial Assist: The individual requires the occasional assistance of another person both outside and in a familiar environment, such as the home, even with assistive devices.

(iii) Full Assist: The individual cannot get around, even with assistive devices, without ongoing assistance from another person.

(B) Transfer means the activity of moving to or from a chair, bed or wheelchair using assistive devices, if needed.

(i) Assist: At least four days during the month, the individual can transfer, with assistive devices if needed, only if assisted by another person. This includes hands-on help for weight-bearing individuals or stand-by presence for safety in transfer.

(ii) Full Assist: The individual cannot transfer even with assistive devices, and is dependent on one or more other persons to perform the transfer. This includes hands-on transfer for non-weight bearing individuals.

(6) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any activity of daily living (ADL). This definition includes the use of service animals, general household items or furniture to assist the individual in performing an ADL.

(7) "Client Assessment and Planning System (CA/PS) is a single entry data system used for completing a comprehensive and holistic client assessment, comprised of critical elements of the individual's physical, mental, and social functioning, including identification of risk factors and outcome measurements. The CA/PS calculates the individual's service priority status, level of care and service payment rates, and accommodates client participation in care planning.

(8) "Department" means the Department of Human Services/Seniors and People with Disabilities.

(9) "Functional Impairment" means a person's pattern of mental and physical limitations that, even in the best of environments, permanently or temporarily restrict his or her capability of functioning independently.

(10) "Home and Community Based Care Waiver Services" means services approved for Oregon by the Centers for Medicare and Medicaid Services for aged and physically disabled persons in accordance with Sections 1915 (c) and 1115 of Title XIX of the Social Security Act.

(11) "Independent" means the individual does not meet the definition of "Assist" or "Full Assist."

(12) "Mental or Emotional Disorder" means a schizophrenic, mood, paranoid, panic or other anxiety disorder; somatoform, personality, dissociative, factitious, eating, sleeping, impulse control or adjustment disorder or other psychotic disorder, as defined in the Diagnostic and Statistical Manual, published in 1994 by the American Psychiatric Association.

(13) "Service Priority" means the order in which Department clients are found eligible for nursing home, HCB waivers, spousal pay program, and Oregon Project Independence.

(14) "Substance abuse related disorders" means disorders related to the taking of a drug or toxin of abuse (including alcohol) and the side effects of medication. These disorders include substance dependency and substance abuse, alcohol dependency and alcohol abuse, substance induced disorders and alcohol induced disorders as defined in the Diagnostic and Statistical Manual, published in 1994 by the American Psychiatric Association. Substance abuse related disorders are not considered physical disabilities. Dementia or other long term physical or health impairments resulting from substance abuse may be considered physical disabilities.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.060, 410.070 & 414.065
Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 5-1986, f. & ef. 4-14-86; SSD 9-1986, f. & ef. 7-1-86; SSD 12-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 12-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 21-1991, f. 12-31-91, cert. ef. 1-1-92, Renumbered from former 411-015-0000(2)(a) - (l); SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-23-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 19-2005, f. & cert. ef. 12-29-05

411-015-0100
Eligibility for Nursing Facility or Community-Based Care Services

(1) To be eligible for nursing facility services, Community-based care waiver services for aged and physically disabled, Independent Choices, Spousal Pay, or the Program of All-inclusive Care for the Elderly (PACE), a person must:

(a) Be age 18 or older; and

(b) Be eligible for OSIPM or TANF; and

(c) Meet the functional impairment level within the service priority levels currently served by Seniors and People with Disabilities as outlined in OAR 411-015-0000 and the requirements in OAR 411-015-0015; or

(d) To be eligible to have services paid through the State Spousal Pay Program, the person must meet requirements as listed above in (a), (b), (c), and in addition, the requirements in OAR 411-030-0080.

(2) Individuals who are age 17 or younger and reside in a nursing facility are eligible for nursing facility services only. They are not eligible to receive community-based care waiver services, including Spousal Pay or Independent Choices program services.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.060, 410.070 & 414.065
Hist.: SSD 7-1991(Temp), f. & cert. ef. 4-1-91; SSD 13-1991, f. 6-28-91, cert. ef. 7-1-91; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 17-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 29-2004(Temp), f. & cert. ef. 8-6-04 thru 1-3-05; SPD 1-2005, f. & cert. ef. 1-4-05; SPD 19-2005, f. & cert. ef. 12-29-05

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Rule Caption: Amended to clarify excluded living arrangements.
Adm. Order No.: SPD 1-2006(Temp)
Filed with Sec. of State: 1-13-2006
Certified to be Effective: 1-13-06 thru 6-1-06
Notice Publication Date:
Rules Amended: 411-030-0040
Subject: In OAR 411-030-0040 a reference to an eligible living arrangement as described in OAR 411-030-0040 was amended. Additional language was added to clarify that residents of prisons, hospitals, and institutions are not eligible for in-home support services.
Rules Coordinator: Lisa Richards—(503) 945-6398

411-030-0040
Eligibility Criteria

(1) In-home support services may be provided to those individuals who meet the established priorities for service as described in OAR chapter 411, division 015 and have been assessed to be in need of a service provided in OAR chapter 411, division 030. Payments for in-home support 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 can be considered or authorized only when such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the individual. An individual whose care needs are met by their natural supports will not be eligible for in-home support services. Service plans will be based upon the least costly means of providing adequate care.

(2) Clients served under the Home and Community Based Services waivered In-Home Services Program must meet the established priorities for service as described in OAR chapter 411, division 015 and be included in one of the following groups:

(a) Current recipients of OSIPM who reside in a living arrangement in which in-home services may be provided, as described in OAR 411-030-0033 and who are eighteen years of age or older;

(b) Eligible adults, eighteen and older, receiving TANF with MAA, MAF or Extended Medical benefits only when service is necessary to prevent nursing facility placement.

(3) To be eligible for the Home and Community-Based Services waivered In-Home Services Program, a client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency to provide those services authorized and paid by the Department.

(a) If, for any reason, the employment relationship between the client and provider is discontinued, an enrolled Homecare Worker or Contracted In-Home Care Agency must be employed within thirty calendar days for the client to remain eligible for the program.

(b) Following discharge from a temporary stay in any facility or medical institution, the client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency within thirty calendar days.

(4) Separate eligibility for in-home support services exists for persons eligible for:

(a) Oregon Project Independence as defined in OAR chapter 411, division 032;

(b) Independent Choices as defined in OAR chapter 411, division 036; or

(c) Spousal Pay Program as defined in OAR 411-030-0080.

(5) Residents of licensed community-based care facilities, nursing facilities, prisons, hospitals and other institutions that provide activities of daily living are not eligible for in-home support services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-12-93, Renumbered from 411-030-0001; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 1-2006(Temp), f. & cert. ef. 1-13-06 thru 6-1-06

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Department of Justice
Chapter 137

Adm. Order No.: DOJ 19-2005
Filed with Sec. of State: 12-27-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 137-045-0010, 137-045-0035, 137-045-0050, 137-045-0070, 137-045-0080
Subject: Rules concerning the Attorney General's review of state contracts for legal sufficiency are being changed to align them with 2003 and 2005 revisions to the Oregon Public Contracting Code, to modify and explain certain exceptions and exemptions, and to clarify other provisions. Changes are being made to the definitions of architectural and engineering and personal services contracts; the requirement to submit procurement documents to the Attorney General prior to release; and exemptions from legal sufficiency review for amendments to non-public improvement contracts, bonds and

certificates of participation, foster care agreements, reinstated public contracts and emergencies.
Rules Coordinator: Carol Riches—(503) 378-6313

137-045-0010
Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in OAR chapter 137, division 045:

(1) "Act" means ORS 291.045, 291.047, and 291.049.

(2) "Agency" means any state officer, board, commission, department, institution, branch, or agency that is subject to the Act and whose costs are paid wholly or in part from funds held in the State Treasury. Agency does not include the Legislative Assembly or the courts and their officers and committees.

(3) "Agency Contract Administration" means an action undertaken by an Agency in accordance with the terms of a Public Contract that does not change the Public Contract. Agency Contract Administration does not include an assignment of rights or delegation of duties under a Public Contract to a third party. Examples of Agency Contract Administration include, but are not limited to, actions that result in:

(a) A notice to proceed, the exercise of an option, or any other exercise of a contractual right, whereby the Agency causes a Public Contract to be implemented in accordance with its terms; and

(b) A purchase order or a similar ordering instrument issued under a Requirements Contract or under a Variable Delivery Contract.

(4) "Architectural and Engineering Services Contract" means a Public Contract for architectural, engineering and land surveying services as defined in ORS 279C.100(2) or related services as defined in ORS 279C.100(6).

(5) "Assistant Attorney General" means a person appointed by the Attorney General under ORS Chapter 180 as an Assistant Attorney General or as a Special Assistant Attorney General and who is authorized in writing by the Chief Counsel, General Counsel Division, to review and approve Public Contracts for legal sufficiency. Such authorization may be limited by the Public Contract type and amount.

(6) "Attorney in Charge, Business Transactions Section" means the Assistant Attorney General the Attorney General appoints as Attorney in Charge of the Business Transactions Section, General Counsel Division, Department of Justice or an alternate designated by the Chief Counsel, General Counsel Division.

(7) "Attorney General" means the Attorney General of the State of Oregon.

(8) "Chief Counsel, General Counsel Division" means the Assistant Attorney General the Attorney General appoints as Chief Counsel of the General Counsel Division, Department of Justice or an alternate designated by the Attorney General.

(9) "Emergency" means circumstances that create a substantial risk of loss, damage to property, interruption of services or threat to public health or safety that require prompt execution of a Public Contract to deal with the risk.

(10) "Entity" means a natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision. Entity does not include an Agency.

(11) "Federal Cooperative Agreement" means a Public Contract under which an Agency receives money or property from a federal agency for the purpose of supporting or stimulating an Agency program or activity and substantial involvement is expected between the federal agency and the Agency when carrying out the program or activity contemplated in the agreement. A Federal Cooperative Agreement does not include a procurement contract under 31 U.S.C. section 6303.

(12) "Grant" means:

(a) A Public Contract under which an Agency receives money or property from a grantor for the purpose of supporting or stimulating an Agency program or activity, and in which no substantial involvement by grantor is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions; or

(b) A Public Contract under which an Agency provides money or property to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by Agency is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions.

(13) "Information Technology Contract" means a Public Contract for the acquisition, disposal, repair, maintenance or modification of hardware, software, or services for data processing, office automation, or Telecommunications.

(14) "Interagency Agreement" means any agreement solely between Agencies or between an Agency and the Legislative Assembly or the courts, or their officers and committees.

(15) "Intergovernmental Agreement" means any agreement between an Agency and unit of local government of this state, the United States, a United States governmental agency, an American Indian tribe or an agency of an American Indian tribe and includes Interstate Agreements and International Agreements.

(16) "International Agreement" means any agreement between an Agency and a nation or a public agency in any nation other than the United States.

(17) "Interstate Agreement" means any agreement between an Agency and a unit of local government or state agency of another state.

(18) "Last Reviewed Contract" means a Public Contract that has been approved for legal sufficiency under the Act and rules adopted thereunder, and includes all Public Contract amendments that have been approved for legal sufficiency or that were effective prior to a Public Contract amendment that has been approved for legal sufficiency.

(19) "Non-Negotiable Public Contract" means a Public Contract that is a preprinted form of contract comprised of terms and conditions offered to an Agency for acceptance without a commercially reasonable opportunity to negotiate and that is attached to or included with products that are available to the public for purchase at retail, through the mail or direct sales. Examples of a Non-Negotiable Public Contract include, but are not limited to, a shrink-wrapped or click-wrapped license agreement attached to or included with a packaged or electronic copy of computer software.

(20) "Personal Services Contract" means a contract whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a contract for the services of an accountant, physician or dentist, educator, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor) or consultant.

(21) "Price Agreement" means an agreement for the procurement of goods or services at a set price or prices, or at a price or prices established using a method prescribed by the agreement, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing obligation to provide goods or services with no guarantee of a minimum or maximum additional purchase. Price Agreements are sometimes referred to as flexible services agreements, agreements to agree and retainer agreements.

(22) "Procurement Documents" means an invitation to bid, request for proposals, request for quotations, or similar solicitation document, including, when available, the anticipated Public Contract, and including addenda that modify the anticipated Public Contract. However, a request for statements of qualification, a prequalification of bidders, a request for product prequalification, or a similar document that does not customarily include a sample Public Contract is not a Procurement Document, and an addendum that modifies only Technical Specifications is not a Procurement Document.

(23) "Public Contract" means any contract, including any amendments, entered into by an Agency for the acquisition, disposition, purchase, lease, sale or transfer of rights of real or personal property, public improvements, or services, including any contract for repair or maintenance. An Intergovernmental Agreement entered into for any of the foregoing actions is a Public Contract. An Interagency Agreement is not a Public Contract. Agency Contract administration is not a Public Contract.

(24) "Public Improvement Contract" means any Public Contract for construction, reconstruction, or major renovation on real property by or for an Agency.

(25) "Requirements Contract" means a Public Contract that requires that all of the purchaser's requirements for the goods or services specified in the Public Contract for the period of time, or for the project(s) specified in the Public Contract, shall be purchased exclusively from the seller.

(26) "Statement of Work" means all provisions of a Public Contract that specifically describe the services or work to be performed or goods to be delivered by either the contractor, its subcontractor(s), or the Agency, as applicable, including any related Technical Specifications, deadlines, or deliverables.

(27) "Technical Specifications" with respect to equipment, materials and goods, means descriptions of dimensions, composition and manufacturer and quantities and units of measurement that describe quality, performance, and acceptance requirements. With respect to services, "Technical Specifications" means quantities and units of measurement that describe quality, performance and acceptance requirements.

(28) "Telecommunications" means 1-way and 2-way transmission of information over a distance by means of electromagnetic systems, electro-optical systems, or both.

(29) "Variable Delivery Contract" means a Public Contract that, during its term, uses purchase orders or similar ordering instruments to provide for incremental delivery of the amount of goods or services, or both, that is specified in the Public Contract. A Variable Delivery Contract identifies goods or services by any method that is both commercially reasonable and in accordance with industry standards, including but not limited to, Technical Specifications, time of delivery, place of delivery, manufacturer, form of delivery, or any combination of the foregoing.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.045, 291.047 & 291.049
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06

137-045-0035
Review of Anticipated Public Contract

(1) Except as provided in this rule, if an Agency expects the resulting Public Contract to require legal sufficiency approval, an Agency must also submit to the Attorney General any associated Agency Procurement Documents for review of the anticipated Public Contract prior to release of the Procurement Documents. This requirement for submission of Procurement Documents may be waived in writing by the Attorney in Charge of the Business Transactions Section if the reviewing Assistant Attorney General determines that the resulting Public Contract is legally sufficient and resolicitation of the Public Contract would not materially reduce the risk to the State.

(2) The requirement for submission of Procurement Documents in section (1) of this rule does not apply to competitive price quotes or competitive proposals for intermediate procurements that are informally solicited pursuant to ORS 279B.070(3) or Oregon Laws 2003, chapter 794, sections 132 and 133 (for Public Improvement Contracts).

(3) Review of the anticipated Public Contract includes determining what law applies to the procurement and applying that law to the procurement documents to determine whether the procurement process complies with applicable law and Agencies' reasonable interpretations of their own rules. The reviewing attorney is not required to inquire into facts concerning the procurement process that are not apparent on the face of the documents. The reviewing attorney may require changes to the Procurement Documents that are necessary for compliance with applicable law. If the reviewing attorney determines that nothing in the Procurement Documents, or otherwise apparent to the attorney, would prevent approval of the anticipated Public Contract for legal sufficiency, the attorney shall authorize release of the Procurement Documents. The attorney may condition an authorization to release procurement documents as necessary for compliance with these rules. Authorization to release the Procurement Documents does not ensure subsequent legal sufficiency approval of the Public Contract contemplated by the procurement and any accepted response. Authorization to release does not include a determination that the solicitation process complies with applicable statutes or rules.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.047
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06

137-045-0050
Exemptions from Legal Sufficiency Approval Based on Risk Assessment

The Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts within the types of Public Contracts listed below. The Attorney General exempts from the legal sufficiency approval requirement under the Act the Public Contracts falling within the types of Public Contracts listed below:

(1) Adoption Assistance Agreements. A document of understanding between the Department of Human Services and adoptive parents of a special needs child as defined under title IV-E at section 473(c) of the Social Security Act.

(2) Amendments to Non-Public Improvement Contracts. A written amendment to a Public Contract that is not a Public Improvement Contract, if all of the following apply:

(a) The original Public Contract was approved for legal sufficiency.

(b) The amendment modifies only one or both of the following, and related payment obligations as necessary:

(A) The Statement of Work to require the contractor to provide additional goods, services or other work within the general scope of the Last Reviewed Contract.

(B) The expiration date of the Public Contract; Technical Specifications; time, place, quantity or form of delivery, or price.

(c) The aggregate increase in payments scheduled to be made by the Agency, or the aggregate decrease in payments scheduled to be received by the Agency, under the amendment, and all prior amendments exempted from the legal sufficiency approval requirement under this section subsequent to the Last Reviewed Contract, do not exceed $75,000.

(3) Amendments to Public Improvement Contracts.

(a) A written change order to a Public Improvement Contract, other than as provided in subsections (b) and (c) of this section, if all of the following apply:

(A) The original Public Improvement Contract was approved for legal sufficiency.

(B) The change order is within the general scope of the Public Improvement Contract.

(C) The change order is implemented in accordance with the change order provisions of the Public Improvement Contract.

(D) Any increase in Agency payments under the change order does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that change order and all prior change orders subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(b) The amendment (whether in the form of a change order or amendment) is modifying the guaranteed maximum price (GMP) in a Construction Manager/General Contractor (CM/GC) contract (as defined in OAR 137-040-0510) if all of the following apply:

(A) The original contract and any amendment that established the original GMP were approved for legal sufficiency.

(B) The amendment is made under the terms of the Last Reviewed Contract.

(C) The amendment does not increase the GMP by more than $500,000 or five percent (5%) of the GMP established under the Last Reviewed Contract (whichever is less).

(D) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the GMP established under the Last Reviewed Contract by more than ten percent (10%).

(c) The amendment (whether in the form of a change order or amendment) is modifying the GMP in a Design-Build contract (as defined in OAR 137-040-0510) or in the construction phase of an energy savings performance contract (as defined in Or Laws 2003, ch 562 §1) if all of the following apply:

(A) The original contract and any amendment that established the original GMP were approved for legal sufficiency.

(B) The amendment is made under the terms of the Last Reviewed Contract.

(C) The amendment does not increase the GMP by more than $500,000 or five percent (5%) of the GMP established under the Last Reviewed Contract (whichever is less).

(D) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the GMP established under the Last Reviewed Contract by more than ten percent (10%) or $500,000 (whichever is less).

(4) Bonds and Certificates of Participation. A Public Contract that relates to the issuance of a bond, certificate of participation or other borrowing obligation of the State of Oregon, including an interest rate exchange agreement, if the Oregon State Treasurer has issued or authorized the bond, certificate of participation or other borrowing obligation to which the Public Contract relates and if bond counsel appointed in accordance with applicable law has issued an authorized opinion for the benefit or use of the bond, certificate of participation or other borrowing obligation purchasers with respect to the enforceability of the bond, certificate of participation or other borrowing obligations upon closing of the transaction.

(5) Employment Agreements. Employment agreements; collective bargaining agreements negotiated under applicable federal or state laws, including collective bargaining agreements entered into pursuant to ORS 410.612; or notices of appointment provided in accordance with OAR chapter 580, division 021. Agreements with third-party providers of temporary services are not exempt.

(6) Federal Contracts. A contract with a federal agency consisting substantially of provisions prescribed in Federal Acquisition Regulations or federal agency supplemental acquisition clauses (48 CFR), except a contract allowed under Section 211 of the federal E-Government Act of 2002.

(7) Federal Cooperative Agreements. A Federal Cooperative Agreement.

(8) Federal Grants. A grant from a federal agency under which an Agency is the grantee, provided that the Agency has a grants coordinator.

(9) Federal Pass-Through Grants. A grant under which an Agency passes through to another recipient all or a portion of the money or property received by the Agency under a grant from a federal agency, provided that:

(a) The Agency does not add to or modify the federal grant except as necessary to provide for proper administration; and

(b) The grant contains a clause substantially in the following form: "The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay to grantor."

(10) Foster Care Agreements. An agreement between the Department of Human Services or the Oregon Youth Authority and a foster parent for the provision of foster care to an individual under the age of 21, or a youth placed with the Department of Human Services or Oregon Youth Authority pursuant to ORS 419C.478.

(11) Home Care Services Agreements. An agreement for the provision of and payment for home care services as defined in ORS 410.600(6).

(12) Membership Agreements. A Public Contract that calls for the payment of dues or fees in consideration of membership in a club, institution, or association and in which the State of Oregon acquires no ownership interest.

(13) Non-Negotiable Public Contracts. A Non-Negotiable Public Contract.

(14) Prescribed Contracts. A Public Contract that is in the form prescribed in Procurement Documents, provided that the Procurement Documents were approved unconditionally for release under OAR 137-045-0035. Prescribed Contracts do not vary from the form prescribed in Procurement Documents other than to fill in blanks in the form, as is commonly done with invitations to bid for goods and services other than personal services.

(15) Purchase Order Contracts. A Public Contract formed by a purchase order or a similar ordering instrument for the purchase of goods or services under a Price Agreement, provided that the Price Agreement was approved by an Assistant Attorney General and the purchase order or similar instrument complies with any conditions of the approval.

(16) Reinstated Public Contracts. A Public Contract entered into solely for the purpose of reinstating an expired Public Contract in accordance with OAR 125-256-0570 or 125-248-0310 if, when required under the Act, the expired Public Contract and all amendments to the expired Public Contract were approved for legal sufficiency.

(17) Settlement Agreements. Agreements settling disputed claims, provided that they do not have the effect of amending Public Contracts that are subject to the legal sufficiency approval requirement under the Act.

Stat. Auth.: ORS 291.047(4)
Stats. Implemented: ORS 291.047
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0050(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06

137-045-0070
Emergency Public Contract Exemption

(1) Upon the Agency's compliance with the procedures set forth in this rule, a Public Contract entered into in an Emergency shall be exempt from the legal sufficiency approval requirement under the Act.

(2) Within 10 business days after execution of the Public Contract, an executive officer of the Agency who is responsible for oversight of the Public Contract must prepare and sign a written report that contains:

(a) A concise summary of the circumstances that constitute the Emergency and the character of the risk of loss, damage, interruption of services or threat to public health or safety created or anticipated to be created by the Emergency circumstances;

(b) A statement of the reason or reasons why the prompt execution of the proposed Public Contract was required to deal with the risk created or anticipated to be created by the Emergency circumstances;

(c) A brief description of the services or goods to be provided under the Public Contract, together with its anticipated cost; and

(d) A brief explanation of how the Public Contract, in terms of duration, services or goods provided under it, was restricted to the scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances.

(3) The Agency shall maintain a copy of the report in the Agency's Emergency Public Contract file. The Agency shall provide a copy of the report to the Attorney in Charge, Business Transactions Section and to the Administrator of the Department of Administrative Services' State Procurement Office within thirty (30) days after preparing the report.

Stat. Auth.: ORS 291.047(5)
Stats. Implemented: ORS 291.047(5)(b)
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06

137-045-0080
Authorization of Services Prior to Legal Sufficiency Approval

At an Agency's request and upon the Agency's compliance with the procedures set forth in this rule, the Attorney General, through the Attorney in Charge, Business Transactions Section, may authorize services to be performed under specific types of written Public Contracts or under written Public Contracts for specific Agency programs, before legal sufficiency approval as follows:

(1) An Agency requesting authorization for performance of services under Public Contracts prior to legal sufficiency approval must submit a written authorization request signed by an executive officer of the Agency who is responsible for oversight of the Public Contracts to the Attorney in Charge, Business Transactions Section. The request must include:

(a) A statement that the authorization request is made pursuant to this rule;

(b) A description of the specific type of Public Contracts within the authorization request and a description of the circumstances in which the Agency will use these Public Contracts, or a description of the specific program for which the Agency will use the Public Contracts to be covered by the authorization;

(c) A citation to the requesting Agency's statutory authority for entering into the specific type of Public Contracts to be covered by the authorization;

(d) The form of Public Contracts comprising the type of Public Contracts within the exemption request or the form of Public Contracts used for the specific Agency program;

(e) A description of the Agency's internal contract approval process and the signatures required for the type of Public Contracts within the authorization request; and

(f) Any other information that the Attorney General requests in connection with the authorization request.

(2) If the Attorney General determines that the authorization for performance of services prior to legal sufficiency approval will not result in undue risk to the State of Oregon under the type of Public Contracts within the authorization request or under Public Contracts used for the specific Agency program described in accordance with section (1) of this rule, the Attorney General may authorize the services under those Public Contracts prior to legal sufficiency approval.

(3) If the Attorney General authorizes services under a Public Contract prior to legal sufficiency approval, the Attorney General, through the Attorney in Charge, Business Transactions Section, will provide the Agency with a written pre-approval service authorization, subject to any conditions or limitations the Attorney General deems appropriate, including but not limited to a condition that the Public Contract may not be amended prior to legal sufficiency approval.

(4) Any Public Contract under which the Attorney General authorizes services to be performed before approval for legal sufficiency must be submitted to the Attorney General, through the Attorney in Charge, Business Transactions Section, for legal sufficiency approval within a reasonable time after the Public Contract is signed by the parties, but in all cases before the Agency makes any payments under the Public Contract. As a condition for legal sufficiency approval, the Attorney in Charge, Business Transactions Section may require that the Public Contract be amended as necessary to make it legally sufficient.

(5) After the Public Contract has been approved for legal sufficiency, the Agency may make payments on the Public Contract even if the payments are for services rendered prior to legal sufficiency approval. An Agency is not authorized to make payments on the Public Contract before the Public Contract is approved for legal sufficiency and all other required approvals are obtained.

(6) The Attorney General, through the Attorney in Charge, Business Transactions Section, may at anytime review an authorization for pre-approval services granted under this rule. The Attorney General, through the Attorney in Charge, Business Transactions Section, may revoke or modify such authorization at any time upon written notice to the Agency that it is in the best interest of the State of Oregon that such authorization be revoked or modified. Revocation or modification of an authorization for pre-approval services granted under this rule shall not affect the validity of Public Contracts entered into under the authorization prior to the revocation or modification.

Stat. Auth.: ORS 291.047(3) & 291.047(6)
Stats. Implemented: ORS 291.047(6)
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06

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Subject: The rule changes amend the Attorney General's model public contract rules applicable to state and local contracting agencies.

Division 46 has been revised to address any 2005 legislative changes to public procurements in general. Several new definitions have been added including separate definitions for "Goods" and "Services" and definitions for "Request for Qualifications," "Request for Quotes," "Responsible" and "Responsive." Division 46 has been revised to incorporate the requirement for notice to the Advocate for Minorities, Women and Emerging Small Businesses. Division 46 also has been revised to eliminate redundant language and to simplify and clarify several provisions.

Division 47 has been revised to address 2005 legislative changes affecting public procurements of goods and services. It clarifies that agencies may revise bid specifications after closing of phase one in multistep sealed bidding and may employ methods of contractor selection such as discussions and negotiations and best and final offers in conducting phase one of multistep sealed proposals. The public notice period for approval of special procurements has been reduced to seven days to be consistent with other public notice periods. Division 47 has also been revised to eliminate redundancy and to simplify and clarify several provisions.

Division 48 has been revised to address 2005 legislative changes affecting public procurements of Architectural, Engineering and Land Surveying Services, and Related Services. Division 48 has also been revised to more clearly and consistently refer to defined terms such as "Architectural, Engineering and Land Surveying Services," "Related Services" and "Consultant," to clarify provisions pertaining to cancellation of a procurement, to clarify provisions related to expired and terminated contracts, to generally clarify and simplify other provisions, and to better coordinate the Division 48 rules with the Division 46 rules by relocating terms or provisions of broader application to Division 46.

Division 49 has been revised to address 2005 legislative changes affecting public improvement and public works contracting. It provides a new definition of "Work," places new requirements on competitive bidding exemption findings, clarifies the use of Requests for Qualifications in a new rule and provides other clarifications to existing rules.

Rules Coordinator: Carol Riches—(503) 378-6313

137-046-0100
Content and General Application; Federal Law Supremacy

(1) These Model Rules are rules of procedure for Public Contracting as required under ORS 279A.065 and consist of the following four divisions:

(a) This division 46, which applies to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods, Services and Personal Services other than Architectural, Engineering and Land Surveying Services and Related Services;

(c) Division 48, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) If a conflict arises between these division 46 rules and rules in divisions 47, 48 and 49, the rules in divisions 47, 48 and 49 take precedence over these division 46 rules.

(3) Except as otherwise expressly provided in ORS 279C.800 through 279C.870, and notwithstanding ORS Chapters 279A, 279B, and 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670 or these Model Rules, or require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and 279C.005 through 279C.670 or these Model Rules.

(4) These division 46 rules apply to Public Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.030 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0110
Definitions for the Model Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Model Rules have the meaning set forth in the division of the Model Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined here, the meaning set forth in the Code. The following terms, when capitalized in these Model Rules, have the meaning given below:

(1) "**Addendum**" or "**Addenda**" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "**Administering Contracting Agency**" has the meaning set forth in ORS 279A.200(1) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).

(3) "**Award**" means, as the context requires, either identifying or the Contracting Agency's identification of the Person with whom the Contracting Agency intends to enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person and the completion of all Contract negotiations.

(4) "**Bid**" means a Written response to an Invitation to Bid.

(5) "**Closing**" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(6) "**Code**" means the Public Contracting Code.

(7) "**Competitive Range**" means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with OAR 137-047-0262 or 137-049-0650.

(8) "**Contract**" means a Contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(9) "**Contract Price**" means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(10) "**Contract Review Authority**" means:

(a) For State Contracting Agencies, generally the Director of the Oregon Department of Administrative Services;

(b) For Local Contracting Agencies, the Local Contracting Agency's Local Contract Review Board determined as specified in ORS 279A.060; and

(c) Where specified by statute, the Director of the Oregon Department of Transportation.

(11) "**Contractor**" means the Person, including a Consultant as defined in OAR 137-048-0110(1), with whom a Contracting Agency enters into a Contract.

(12) “**DBE Disqualification**” means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

(13) “**Descriptive Literature**” means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(14) “**Electronic Advertisement**” means a Contracting Agency’s Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Contracting Agency’s Procurements made available over the Internet via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency’s Electronic Procurement System.

(15) “**Electronic Offer**” means a response to a Contracting Agency’s Solicitation Document or Request for Quotes submitted to a Contracting Agency via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency’s Electronic Procurement System.

(16) “**Electronic Procurement System**” means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

(17) “**Goods**” means supplies, equipment, materials, or any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, or any combination of these items.

(18) “**Invitation to Bid**” or “ITB” means the document issued to invite offers from prospective Contractors pursuant to either ORS 279B.055, or 279C.335.

(19) “**Model Rules**” means the Attorney General’s model rules of procedure for Public Contracting as required under ORS 279A.065.

(20) “**Offer**” means a Written response to a Solicitation Document.

(21) “**Offeror**” means a Person who submits an Offer.

(22) “**Opening**” means the date, time and place specified in the Solicitation Document for the public opening of Offers.

(23) “**Person**” means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(24) “**Personal Services**” as used in division 47 and as used in division 46 when applicable to division 47 means the services performed under a Personal Services Contract. “Personal Services” as used in division 48 and division 49, and as used in this division 46 when applicable to division 48 or division 49, or both, has the meaning set forth in ORS 279C.100.

(25) “**Personal Services Contract**” means:

(a) For a Local Contracting Agency, a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Local Contracting Agency’s Local Contract Review Board has designated as a personal services contract pursuant to ORS 279A.055; or

(b) For a State Contracting Agency, a Contract, or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(26) “**Product Sample**” means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(27) “**Proposal**” means a Written response to a Request for Proposals.

(28) “**Recycled Materials**” means recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(gg)).

(29) “**Request for Qualifications**” or “RFQ” means a Written document issued by a Contracting Agency to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(30) “**Request for Quotes**” means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.”

(31) “**Responsible**” means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(32) “**Responsible Offeror**” means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(33) “**Responsive**” means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(34) “**Responsive Offer**” means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(35) “**Services**” means services other than Personal Services.

(36) “**Signature**” means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(37) “**Signed**” means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(38) “**Solicitation Document**” means an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C.

(39) “**Specification**” means a description of the physical or functional characteristics, or of the nature of the Goods or Services, including any requirement for inspecting, testing or preparing the Goods or Services for delivery and the quantities or qualities of the Goods and Services to be furnished under a Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(40) “**Writing**” means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. “Writing,” when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(41) “**Written**” means existing in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0130
Application of the Code and Model Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all rights, powers and authority related to Public Contracting in accordance with the Code and the Model Rules.

(2) A Contracting Agency that has specifically opted out of the Model Rules and adopted its own rules of procedure for Public Contracting pursuant to 279A.065 in the exercise of its own contracting authority is not subject to these Model Rules, except for those portions of the Model Rules that the Contracting Agency has prescribed for its own use for Public Contracting.

(3) Contracts or classes of Contracts for Personal Services of a Local Contracting Agency designated as such by the Local Contracting Agency’s Local Contract Review Board pursuant to ORS 279A.055, are not subject to these Model Rules, unless the Local Contracting Agency adopts OAR 137-047-0250 through 137-047-0290 as the procedures the Local Contracting Agency will use to screen and select persons to perform Contracts for Personal Services other than Architectural, Engineering and Surveying Services and Related Services.

(4) These Model Rules do not apply to the Contracts or the classes of Contracts described in ORS 279A.025(2).

(5) These Model Rules do not apply to the Public Contracting activities of the Contracting Agencies listed in ORS 279A.025(3).

(6) Contracting Agencies otherwise subject to the Code and these Model Rules may enter into Contracts for Goods or Services with non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279C.835 through 279C.855 without following the source selection procedures set forth in either ORS 279A.200 through 279A.225, or 279B.050 through 279B.085. However, Contracting Agencies must enter into such Contracts in accordance with administrative rules promulgated by the Department.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.050, 279A.055, 279A.065 & 279A.180
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0200
Notice to Advocate for Minorities, Women and Emerging Small Businesses

Pursuant to ORS 200.035, State Contracting Agencies shall provide timely notice of all Procurements and Contract Awards to the Advocate for

Minority, Women and Emerging Small Business if the estimated Contract Price exceeds $5,000.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.100
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0210
Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) For purposes of ORS 279A.105, a subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in a Signed Writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture or provide the Goods or perform the Services or Personal Services under the Contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitute a substantial number.

(2) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

(3) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with subsections (b) and (c) of this Section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed DBE Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived the right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.

(d) Notice of DBE Disqualification. The Contracting Agency shall provide Written notice of the DBE Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.065, 200.075, 279A.065, 279A.105 & 279A.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0300
Preference for Oregon Goods and Services; Nonresident Bidders

(1) Award When Offers Identical. When a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Contracting Agency shall Award the Contract based on the following order of precedence:

(a) The Contracting Agency shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services, that have been manufactured or produced in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that have been manufactured or produced in Oregon, the Contracting Agency shall Award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services, or both, or Personal Services, that have been manufactured or produced in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide to the Offerors who submitted the identical Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(2) Determining if Offers are Identical. A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Offers received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in Writing, that two or more Proposals are equally advantageous to the Contracting Agency.

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with ORS 279B.070(4).

(3) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon. For the purposes of complying with Section 1 of this rule, Contracting Agencies shall determine whether a Contract is predominantly for Goods, Services or Personal Services and then use the predominant purpose to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time the Contracting Agency determines is appropriate, any information the Contracting Agency may need to determine if the Goods, Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods, Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Offeror.

(4) Procedure for Drawing Lots. When this rule calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.120
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0310
Reciprocal Preferences

When evaluating Bids pursuant to OAR 137-047-0255, 137-047-0257 or 137-049-0390 and applying the reciprocal preference provided under ORS 279A.120(2)(b) a Contracting Agency may rely on the list prepared and maintained by the Department pursuant to ORS 279A.120(4) to determine (i) whether the Nonresident Bidder's state gives preference to in-state bidders and (ii) the amount of such preference.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.120
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0320
Preference for Recycled Materials

(1) In comparing Goods from two or more Offerors, if at least one Offeror offers Goods manufactured from Recycled Materials, and at least one Offeror does not, a Contracting Agency shall select the Offeror offering Goods manufactured from Recycled Materials if each of the conditions specified in ORS 279A.125(2) exists. When making the determination under ORS 279A.125(2)(d), the Contracting Agency shall consider the costs of the Goods following any adjustments the Contracting Agency makes to the price of the Goods after evaluation pursuant to OAR 137-046-0310.

(2) A Contracting Agency shall determine if Goods are manufactured from Recycled Materials in accordance with standards established by the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.125
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0400
Authority for Cooperative Procurements

(1) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) Each Purchasing Contracting Agency shall determine in Writing whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085, consistent with 279A.200(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.205
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0410
Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurement administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person who participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether each Person must enter into a Written agreement with the Administering Contracting Agency, and any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting Agency may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Model Rules.

(2) If a Contracting Agency acting as a Purchasing Contracting Agency enters into a Contract based on a Cooperative Procurement, the Contracting Agency shall comply with the Code and these Model Rules, including without limitation those sections of the Code and these Model Rules that govern:

(a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement;

(b) The advertisement of the Solicitation Document related to the Cooperative Procurement; and

(c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts based on a Cooperative Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.205
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0440
Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement

(1) For purposes of determining whether a Purchasing Contracting Agency must give notice of intent to establish a Contract through a Permissive Cooperative Procurement as required by ORS 279A.215(2)(a), the estimated amount of the procurement will exceed $250,000 if:

(a) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract that will, in aggregate, exceed $250,000, whether or not the total amount or value of the payments is expressly stated;

(b) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides for payment, whether in a fixed amount or up to a stated maximum amount, that exceeds $250,000; or

(c) At the time the Purchasing Contracting Agency enters into the Contract, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services, or both, or Personal Services, under the Contract will, in aggregate, exceed $250,000 over the anticipated duration of the Contract.

(2) An Administering Contracting Agency that intends to establish a Contract arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), 279A.215(3) and these Model Rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.215
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0460
Advertisements of Interstate Cooperative Procurements

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in ORS 279B.055(4)(b) and (c).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.220
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0470
Protests and Disputes

(1) An Offeror or potential Offeror wishing to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement or the award or proposed award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425 unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

(3) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279A.225
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-046-0480
Contract Amendments

A Purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in OAR 137-047-0800.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0000
Application

These division 47 rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods and Services. State Contracting Agencies shall also procure Personal Services, except for Architectural, Engineering, Land Surveying and Related Services, in the same manner Services are procured under these division 47 rules. Local Contracting Agencies, pursuant to ORS 279B.050(4)(a), may also adopt these division 47 rules to govern the Procurement of Personal Services Contracts or elect to award Personal Services Contracts under procedures set forth in ORS 279B.055 through 279B.085. These division 47 rules apply to Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.015
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0100
Definitions

(1) "**Advantageous**" means in the Contracting Agency's best interests, as assessed according to the judgment of the Contracting Agency.

(2) "**Affected Person**" or "**Affected Offeror**" means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0250
Methods of Source Selection

Except as permitted by ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, a Contracting Agency shall Award a Contract for Goods or Services, or both based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 or competitive sealed Proposals pursuant to ORS 279B.060.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.050
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0257
Multistep Sealed Bids

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep sealed bidding pursuant to ORS 279B.055(12).

(2) Phased Process. Multistep sealed bidding is a phased Procurement process that seeks necessary information or unpriced technical Bids in the first phase and regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the first phase to submit competitive sealed price Bids on the technical Bids in the second phase. The Contract shall be Awarded to the lowest Responsible Bidder.

(3) Public Notice. Whenever a Contracting Agency uses multistep sealed bidding, the Contract Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders and inform Bidders of the right to protest Addenda issued after initial Closing pursuant to OAR 137-047-0430 and inform Bidders excluded from the second phase of the right, if any, to protest exclusion pursuant to OAR 137-047-0720.

(4) Procedures Generally. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the following procedures set forth in this rule for multistep sealed bidding:

(a) Solicitation Protest. Prior to the Closing of phase one, a Contracting Agency shall provide an opportunity to protest the solicitation under ORS 279B.405 and OAR 137-047-0730.

(b) Addenda Protest. A Contracting Agency may provide an opportunity to protest any Addenda issued after Closing of phase one pursuant to OAR 137-047-0430(3)(b).

(c) Exclusion Protest. A Contracting Agency may, but is not required to provide an opportunity for a Bidder to protest exclusion from phase two of multistep sealed bidding as set forth in OAR 137-047-0720.

(d) Administrative Remedy. Bidders may submit a protest to any Addenda or to any action by the Contracting Agency that has the effect of excluding the Bidder from the second phase of multistep sealed bidding to the extent such protests are provided for in the Solicitation Document or required by this section. Failure to so protest shall be considered the Bidders's failure to pursue an administrative remedy made available to the Bidder by the Contracting Agency.

(e) Award Protest. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and OAR 137-047-0740. An Affected Bidder may protest, for any of the bases set forth in OAR 137-047-0720(2), its exclusion from the second phase of a multistep sealed bidding or an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(5) Procedure for Phase One of Multistep Sealed Bidding.

(a) Form. A Contracting Agency shall initiate multistep sealed bidding by the issuance of an Invitation to Bid in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth OAR 137-047-0255(1), the multistep Invitation to Bid shall state:

(A) That unpriced technical Bids are requested;

(B) Whether price Bids are to be submitted at the same time as unpriced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;

(C) That the solicitation is a multistep sealed Bid Procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose unpriced technical Bids are found eligible in the first phase;

(D) The criteria to be used in the evaluation of unpriced technical Bids;

(E) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the unpriced technical Bids;

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid; and,

(G) Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.

(b) Addenda to the Invitation to Bid. After receipt of unpriced technical Bids, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted unpriced technical Bids.

(c) Receipt and Handling of Unpriced Technical Bids. Unpriced technical Bids need not be opened publicly.

(d) Evaluation of Unpriced Technical Bids. Unpriced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Unpriced technical Bids shall be categorized as:

(A) Eligible;

(B) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(C) Ineligible. The Contracting Agency shall record in writing the basis for determining a Bid ineligible and make it part of the Procurement file. The Contracting Agency may initiate phase two of the procedure if, in the Contracting Agency's opinion, there are sufficient eligible unpriced technical Bids to assure effective price competition in the second phase without technical discussions. If the Contracting Agency finds that such is not the case, the Contracting Agency may issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in subsection (4)(e) of this rule.

(e) Discussion of Unpriced Technical Bids. The Contracting Agency may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Closing of the second phase. Such submission may be made at the request of the Contracting Agency or upon the Bidder's own initiative.

(f) Notice of Ineligible Unpriced Technical Bid. When the Contracting Agency determines a Bidder's unpriced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.

(g) Mistakes During Multistep Sealed Bidding. Mistakes may be corrected or Bids may be withdrawn during phase one:

(A) Before unpriced technical Bids are considered;

(B) After any discussions have commenced under OAR 137-047-0257(4)(e); or

(C) When responding to any Addenda of the Invitation to Bid and,

(D) In accord with OAR 137-047-0470.

(6) Revisions to Solicitation Specifications. After Closing of phase one, the Contracting Agency may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The Contracting Agency shall provide such Addenda to all Bidders who initially submitted unpriced technical Bids. The contracting Agency may then require Bidders to submit revised unpriced technical Bids.

(7) Procedure for Phase Two of Multistep Sealed Bidding.

(a) Initiation. Upon the completion of phase one, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

(b) Conduct. A Contracting Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule;

(B) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0260
Competitive Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section (2) of this rule. The Contracting Agency shall provide public notice of the competitive sealed Proposal as set forth in OAR 137-047-0300.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See OAR 137-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(3)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See OAR 137-047-0430).

(b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(2)(h)(E). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency;

(C) If the Contracting Agency's solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency shall state the size of the Competitive Range in the Solicitation Document. However, the Contracting Agency may increase or decrease the number of Proposers in the Competitive Range in accordance with OAR 137-047-0262(1)(a)(B).

(D) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to OAR 137-047-0600(4)(d), the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable Preferences described in ORS 279A.125(2) and 282.210.

(e) For Contracting Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the Goods or Services without prior written approval from the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0262
Competitive Range, Discussions and Negotiations

(1) Competitive Range. When a Contracting Agency's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency shall determine and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The Contracting Agency may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-030-0720.

(c) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with section (1)(b) expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-047-0740 and ORS 279B.410.

(ii) After the protest period provided in accordance with OAR 137-047-0740 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence negotiations in accordance with section (3) of this rule with Proposers in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in section (2) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in section (3) of this rule with the Proposers in the Competitive Range.

(2) Discussions; Revised Proposals. If the Contracting Agency chooses to enter into discussions with and receive best and final Offers (See OAR 137-047-0262(4)), the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Contracting Agency would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (2), but need not conduct the same amount of discussions with each eligible Proposer. The Contracting Agency may terminate discussions with any eligible Proposer at any time. However, the Contracting Agency shall offer all eligible Proposers the same opportunity to discuss their Proposals with the Contracting Agency before the Contracting Agency notifies eligible Proposers of the date and time pursuant to section (4) that best and final Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(ii) Shall disclose other eligible Proposer's Proposals or discussions only in accordance with 279B.060(6)(a)(B) or (C);

(iii) May adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular eligible Proposer;

(ii) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(iii) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section (4) of this rule to the eligible Proposers requesting best and final Offers.

(3) Negotiations.

(a) Initiating Negotiations. The Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers as follows:

(A) After initial determination of which Proposals are Responsive; or

(B) After initial determination of the Competitive Range in accordance with section (1) of this rule; or

(C) After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See section (2) of this rule).

(b) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of work;

(ii) The Contract Price as it is affected by negotiating the statement of work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.

(B) Terminating Negotiations. At any time during discussions or negotiations that the Contracting Agency conducts in accordance with sections (2) or (3) of this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(i) The Proposer is not discussing or negotiating in good faith; or

(ii) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with a Proposer in accordance with section 3(b)(B) of this rule, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in section (3) of this rule until the Contracting Agency has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Contracting Agency has completed all rounds of discussions or negotiations.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing Proposers. The Contracting Agency:

(A) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(B) May disclose other Proposer's Proposals or the substance of negotiations with other Proposers only if the Contracting Agency notifies all of the Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any Proposer.

(e) Any oral modification of a Proposal resulting from negotiations under this section (3) shall be reduced to Writing by the Proposer.

(4) Best and Final Offers. If best and final Offers are required, a Contracting Agency shall establish a common date and time by which Proposers must submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct evaluations conducted as described in OAR 137-047-0600. The Contracting Agency shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0263
Multistep Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279.060(6)(b)(G).

(2) Phased Process. Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and invites Proposers who submitted technically qualified Proposals in the first phase to submit competitive sealed price Proposals on the technical Proposers in the second phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(3) Public Notice. Whenever a Contracting Agency uses multistep sealed Proposals, the Contracting Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion pursuant to OAR 137-047-0720.

(4) Procedure for Phase One of Multistep Sealed Proposals.

(a) Form. Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposal shall state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the second phase from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria to be used in the evaluation of unpriced technical Proposals;

(D) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions of the unpriced technical Proposals;

(E) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal; and,(F) Whether Proposers excluded from the second phase have a right to protest the exclusion. Such information can be given or changed through Addenda.

(b) Addenda to the Request for Proposal. After receipt of unpriced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted unpriced technical Proposals.

(c) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(d) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Unpriced technical Proposals shall be categorized as:

(A) Qualified;

(B) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(C) Unqualified. The Contracting Agency shall record in writing the basis for determining a Proposal unqualified and make it part of the Procurement file. The Contracting Agency may initiate phase two of the procedure if, in the Contracting Agency's opinion, there are sufficient qualified or potentially qualified unpriced technical Proposals to assure effective price competition in the second phase without technical discussions. If the Contracting Agency finds that such is not the case, the Contracting Agency shall issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in section 4(e).

(e) Discussion of Unpriced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who

submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing of the second phase. established by the Contracting Agency. Such submission may be made at the request of the Contracting Agency or upon the Proposer's own initiative.

(f) Notice of Unqualified Unpriced Technical Proposal. When the Contracting Agency determines a Proposer's unpriced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.

(g) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during phase one:

(A) Before unpriced technical Proposals are considered;

(B) After any discussions have commenced under section 4(e) of this rule; or

(C) When responding to any Addenda to the Request for Proposal;

(D) In accordance with OAR 137-040-0470.

(5) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final offers as set forth in OAR 137-047-0261 and 137-047-0262. If the Contracting Agency uses such methods of Contractor selection, it shall follow the procedures set forth in OAR 137-047-0261 and 137-047-0262.

(6) Procedure for Phase Two.

(a) Initiation. Upon the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals.

(b) Conduct. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except:

(A) As specifically set forth in this rule; and

(B) No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0265
Small Procurements

(1) Generally. For Procurements of Goods or Services less than or equal to $5,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065.

(2) Amendments. A Contracting Agency may amend a Contract Awarded as a small Procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to greater than $6,000.

Stat. Auth.: ORS 279A.065 & 279B.065
Stats. Implemented: ORS 279B.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0270
Intermediate Procurements

(1) Generally. For Procurements of Goods or Services greater than $5000 and less than or equal to $150,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) Written Solicitations. For intermediate Procurements equal to or exceeding $75,000, a Contracting Agency shall use a Written solicitation to obtain quotes, Bids or Proposals.

(3) Negotiations. A Contracting Agency may negotiate with a Proposer to clarify its quote, Bid, or Proposal or to effect modifications that will make the quote, Bid, or Proposal acceptable or make the quote, Bid, or Proposal more Advantageous to the Contracting Agency.

(4) Amendments. A Contracting Agency may amend a Contract Awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than twenty-five percent (25%) of the original Contract Price.

Stat. Auth.: ORS 279A.065 & 279B.070
Stats. Implemented: ORS 279B.070
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0275
Sole-source Procurements

(1) Generally. A Contracting Agency may Award a Contract without competition as a sole-Source Procurement pursuant to the requirements of ORS 279B.075.

(2) Public Notice. If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or 279B.060, a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source. The Contracting Agency shall publish such notice in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give such public notice at least seven (7) Days before Award of the Contract.

(3) Protest. An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with OAR 137-047-0710.

Stat. Auth.: ORS 279A.065 & 279B.075
Stats. Implemented: ORS 279B.075
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0280
Emergency Procurements

A Contracting Agency may Award a Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is practicable under the circumstances.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.080
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0285
Special Procurements

(1) Generally. A Contracting Agency may Award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Public Notice. A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract.

(3) Protest. An Affected Person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0700.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.085
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0300
Public Notice of Solicitation Documents

(1) Notice of Solicitation Documents; Fee. A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) Advertising. A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the Contracting Agency's Contract Review Authority has authorized the Contracting Agency to publish notice of Solicitation Documents on the Contracting Agency's Electronic Procurement System.

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with section 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with section 2(a) or (b) above and Closing be less then seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) Posting Advertisement for Offers. The Contracting Agency shall post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. A Proposer may obtain a copy of the advertisement for Offers upon request.

(5) Fees. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with OAR 137-047-0430.

Stat. Auth.: ORS 279A.065, 279B.055 & 279B.060
Stats. Implemented: ORS 279B.055 & 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0330
Electronic Procurement

(1) Electronic Procurement Authorized.

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a Request for Quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) Rules Governing Electronic Procurements. The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) Preliminary Matters. As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) Offer Process. A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with section 5(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) Failure of the E-Procurement System. In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in accordance with OAR 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0400
Offer Preparation

(1) Instructions. An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. An Offeror shall provide the Contracting Agency with all documents and Descriptive Literature required by the Solicitation Document.

(4) Electronic Submissions. If the Solicitation Document permitted Electronic Offers under OAR 137-047-0330, an Offeror may submit its Offer electronically. The Contracting Agency shall not consider Electronic Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0410
Offer Submission

(1) Product Samples and Descriptive Literature. A Contracting Agency may require Product Samples or Descriptive Literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offers

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the

Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0700
Protests and Judicial Review of Special Procurements

(1) Purpose. An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) Delivery. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Authority Response. The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & 279B.400
Stats. Implemented: ORS 279B.400
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0730
Protests and Judicial Review of Solicitations

(1) Purpose. A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.

(3) Content of Protest. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) Contracting Agency Response. The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under OAR 137-047-0430 or cancel the Procurement or solicitation under OAR 137-047-0660.

(5) Extension of Closing. If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider and respond to the protest.

(6) Clarification. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(7) Judicial Review. Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & 279B.405
Stats. Implemented: ORS 279B.405
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0740
Protests and Judicial Review of Contract Award

(1) Purpose. An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision.

(2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after the Award of a Contract, or issuance of the notice of intent to Award the Contract, whichever occurs first.

(3) Content of Protest. An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).

(4) Contracting Agency Response. The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) Judicial Review. Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & 279B.410
Stats. Implemented: ORS 279B.410 & 279B.415
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0745
Protests and Judicial Review of Qualified Products List Decisions

(1) Purpose. A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) Delivery. Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) Contracting Agency Response. The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's goods on the qualified products list.

(5) Judicial Review. Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0800
Amendments

(1) Generally. A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approval of the Special Procurement or the Contract, in that order. An amendment is not within the scope of the Procurement if the Agency determines that if it had described the changes to be made by the amendment in the Procurement Documents, it would likely have increased competition or affected award of the Contract.

(b) These Model Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if multiple Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than the longest term of any of the prior Contracts.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract Awarded as small or intermediate Procurement pursuant to section (1) of this rule, provided that the total increase in Contract price does not exceed the amount set forth in OAR 137-047-0265 for small Procurements or OAR 137-047-0270 for intermediate Procurements.

(3) Price Agreements. A Contracting Agency may amend a Price Agreement if the circumstances set forth in ORS 279B.140(2) exist.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-047-0810
Termination of Price Agreements

A Contracting Agency may terminate a Price Agreement as follows:

(1) As permitted by the Price Agreement;

(2) If the circumstances set forth in ORS 279B.140(2) exist; or

(3) As permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279B.140
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0100
Application; Effective Date

(1) The Attorney General is required to prepare and maintain model rules of procedure that govern Public Contracting under the Public Contracting Code and that are appropriate for use by all Contracting Agencies. These division 48 rules apply to the screening and selection of Architects, Engineers and Land Surveyors, and providers of Related Services, under Contracts and set forth the following procedures:

(a) Procedures through which Contracting Agencies select Consultants to perform Architectural, Engineering and Land Surveying Services, or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Land Surveyors and providers of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) These division 48 rules apply to any Contracting Agency with independent contracting authority that is seeking the services of a Consultant to perform Architectural, Engineering and Land Surveying Services, or Related Services, if the Contracting Agency has not adopted its own rules of procedure for the screening and selection of Consultants to perform Architectural, Engineering and Land Surveying Services or Related Services, as provided in ORS 279A.065(a).

(3) The dollar threshold amounts that are applicable to the Direct Appointment Procedure, OAR 137-048-0200, the Informal Selection Procedure, 137-048-0210, and the Formal Selection Procedure, 137-048-0220, are independent from and have no effect on the dollar threshold amounts that trigger the legal sufficiency review requirement for State Contracting Agencies under OAR 291.047.

(4) Effective Date. These division 48 rules apply to the above-described Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0110
Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and OAR 137-046-0110, the following definitions apply to these division 48 rules:

(1) "**Consultant**" means an Architect, Engineer, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employees Architects, Engineers, Land Surveyors or providers of Related Services, or any combination of the foregoing.

(2) "**Estimated Fee**" means Contracting Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee shall not be used as a basis to resolve other Public Contracting issues, including without limitation, direct purchasing authority or Public Contract review and approval under ORS 291.047.

(3) "**Project**" means all components of a Contracting Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering and Land Surveying Services, or Related Services, under a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0120
List of Interested Consultants; Performance Record

(1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering and Land Surveying Services or Related Services, may annually submit a statement describing their qualifications and related performance information to Contracting Agencies' office addresses. Contracting Agencies will use this information to create a list of prospective Consultants and will update this list at least once every two years.

(2) Contracting Agencies may compile and maintain a record of each Consultant's performance under Contracts with the particular Contracting Agency, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.410 through 192.505) Contracting Agencies may make available copies of the records.

(3) State Contracting Agencies shall keep a record of all Contracts with Consultants and shall make these records available to the public, consistent with the requirements of the Oregon Public Records Law (ORS 192.410 through 192.505). State Contracting Agencies shall include the following information in the record:

(a) Locations throughout the state where the Contracts are performed;

(b) Consultants' principal office address and all office addresses in the State of Oregon;

(c) Consultants' direct expenses on each Contract, whether or not those direct expenses are reimbursed. "Direct expenses" include all amounts that are directly attributable to Consultants' services performed under each Contract, including personnel travel expenses, and that would not have been incurred but for the services being performed. The record shall include all personnel travel expenses as a separate and identifiable expense on the Contract; and

(d) The total number of Contracts awarded to each Consultant over the immediately preceding 10-year period from the date of the record.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0130
Applicable Selection Procedures; Pricing Information

(1) When selecting the most qualified Consultants to perform Architectural, Engineering or Land Surveying Services, State Contracting Agencies and Local Contracting Agencies that are contracting with Consultants under the conditions listed in ORS 279C.110(2) shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). Contracting Agencies subject to this section (1) shall not solicit or use pricing policies and proposals or other pricing information to determine a Consultant's compensation, until

after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) Contracting Agencies selecting Consultants to perform Related Services and Local Contracting Agencies selecting Consultants to perform Architectural, Engineering and Land Surveying Services for Contracts when the conditions under ORS 279C.110(2) do not exist, shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Bids, or OAR 137-048-0200 (Direct Appointment Procedure) if the requirements of OAR 137-048-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Proposals, or OAR 137-048-0200 (Direct Appointment Procedure) if the requirements of OAR 137-048-0200(1) apply. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies, proposals and other pricing information submitted with a Proposal.

(3) Contracting Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If a Contracting Agency uses electronic methods to screen and select a Consultant, Contracting Agency shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(4) In applying these rules, State Contracting Agencies shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0200
Direct Appointment Procedure

(1) Contracting Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Emergency. Contracting Agency finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed $25,000; or

(c) State Contracting Agencies-Continuation of Project With Intermediate Estimated Fee. For State Contracting Agencies where a project is being continued, as more particularly described below, and where the Estimated Fee will not exceed $150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed $150,000; and

(C) The State Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; or

(d) State Contracting Agencies-Continuation of Project With Extensive Estimated Fee. For State Contracting Agencies where a project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed $150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The State Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of selection, to select the Consultant for the earlier Contract; and

(C) The State Contracting Agency makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency;

(ii) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.(e) Local Contracting Agencies. For Local Contracting Agencies, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract:

(A) Consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Local Contracting Agency used a formal selection procedure described in rules applicable to Local Contracting Agency under either ORS 279.049 or 279A.065, whichever was in effect at the time Local Contracting Agency selected Consultant for the earlier Contract; or

(C) Consultant will be assisting Contracting Agency by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal, equitable, administrative or otherwise.

(2) Contracting Agencies may select Consultants for Contracts under this rule from the following sources:

(a) Contracting Agency's list of Consultants that is created under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering and Land Surveying Services or Related Services that Contracting Agency reasonably can identify under the circumstances.

(3) Contracting Agency shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C110 & 279C.115
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0210
Informal Selection Procedure

(1) Contracting Agencies may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed $150,000.

(2) Contracting Agencies using the informal selection procedure shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which Consultant's Architectural, Engineering and Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering and Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineering and

Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering and Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals;

(iii) Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering and Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and contract administration practices;

(iv) Approach to Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) Proposer's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to Proposer, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) Pricing policies, proposals and other pricing information if the Contracting Agency is a Local Contracting Agency selecting a Consultant when the conditions under ORS 279C.110(2) do not exist.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP; and

(G) A statement directing Proposers to the protest procedures set forth in these division 48 rules.

(b) Provide a Request for Proposals to a minimum of five prospective Consultants drawn from:

(A) Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that Contracting Agency reasonably can locate that offer the desired Architectural, Engineering and Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If Contracting Agency does not cancel the RFP after it reviews and ranks each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

(4) Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(5) Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $150,000. Notwithstanding the foregoing, Contracting Agency may continue Contract negotiations with the Proposer selected under the informal selection procedure if Contracting Agency makes written findings that contracting with that Proposer will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency; and

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0220
Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information), Contracting Agencies shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either OAR 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFP or RFQ.

(B) Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering and Land Surveying Services or Related Services Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFP or RFQ; and

(iv) The deadline for submitting a Proposal or response to the RFQ.

(b) In the alternative to advertising in a newspaper as described in subsection 2(a) of this rule, Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(13). Contracting Agency shall comply with subsections 2(a)(A) and 2(a)(B) of this rule when publishing advertisements by electronic methods.

(c) Contracting Agency may send notice of the RFP or RFQ directly to all Consultants on the Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Contracting Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom Contracting Agency may issue an RFP for some or all of the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ.

(a) Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which Contracting Agency is seeking Consultants;

(B) A description of the Architectural, Engineering and Land Surveying Services or Related Services Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering and Land Surveying Services or Related Services Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be

held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Proposers responding to the RFQ do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFQ.

(b) Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultant's general qualifications and related performance information;

(B) A description of Consultant's specific qualifications to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ including Consultant's available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering and Land Surveying Services or Related Services and references concerning past performance, and a copy of all records, if any, of Consultant's performance under Contracts with any other Contracting Agency;

(D) The number of Consultant's experienced staff available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(E) Approach to Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(F) Proposer's geographic proximity to and familiarity with the physical location of the Project;

(G) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) Pricing policies, proposals and other pricing information if the Contracting Agency is a Local Contracting Agency and the conditions under ORS 279C.110(2) do not exist; and

(I) Any other information Contracting Agency deems reasonable necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. Contracting Agency shall establish an RFQ evaluation committee of at least two individuals to review, score and rank the responding Consultants according to the evaluation criteria. Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in architecture, engineering, or land surveying, Related Services, construction or Public Contracting. If Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, Contracting Agency shall establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) Contracting Agency may establish a short list of fewer than three qualified Consultants; or

(B) Contracting Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of Contracting Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agencies shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. Contracting Agencies using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering and Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering and Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposer's availability and capability to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering and Land Surveying Services, or Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposer has available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposer estimates that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(vi) Proposer's demonstrated ability to complete successfully similar Architectural, Engineering and Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposer's knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering and Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(xiii) Pricing policies, proposals and other pricing information if the Contracting Agency is a Local Contracting Agency selecting a Consultant when the conditions under ORS 279C.110(2) do not exist; and

(xiv) Any other criteria that the Contracting Agency seems relevant to the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small busi-

ness enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information Contracting Agency deems reasonably necessary to permit Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Evaluation Committee. Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in architecture, engineering, land surveying, Related Services, construction or Public Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of Contracting Agency's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to Contracting Agency the results of the scoring and ranking for each Proposer.

(c) If Contracting Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(C) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

(d) Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering and Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0230
Ties Among Proposers

(1) If Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, Contracting Agency may select a candidate through any process that Contracting Agency believes will result in the best value for Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering and Land Surveying Services. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, Contracting Agency and the selected Proposer shall proceed with negotiations under OAR 137-048-0210(3) or 137-048-0220(4)(c), as applicable.

(2) If a Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in OAR 137-046-0300, (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0240
Protest Procedures

(1) RFP Protest and Request for Change. Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or contract terms. Contracting Agency will not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection.

(a) Single Award. In the event of an award to a single Proposer, Contracting Agency shall provide to all Proposers a copy of the selection notice that Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, Contracting Agency shall provide to all Proposers copies of the selection notices that Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers, otherwise are not qualified to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. Contracting Agency will not consider any protest that is submitted after the submission deadline.

(3) Resolution of Protests. A duly authorized representative of Contracting Agency shall resolve all timely submitted protests within a reasonable time following Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

(4) Judicial Review. Proposers may be able to obtain judicial review of Contracting Agency's protest disposition pursuant to ORS 183.484.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0250
Solicitation Cancellation; Consultant Responsibility For Costs

A Contracting Agency may cancel a solicitation, whether direct appointment, informal or formal, or reject all Proposals or responses to

RFQs, or any combination of the foregoing, without liability to Contracting Agency at anytime after issuing a solicitation or RFQ, if Contracting Agency believes it is in the public interest to do so. Consultants responding to either solicitations or RFQs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFQs.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0260
Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) If a Local Contracting Agency requires an Architect, Engineer or Land Surveyor to perform Architectural, Engineering and Land Surveying Services or Related Services for a Public Improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Engineers or Land Surveyors for Architectural, Engineering and Land Surveying Services or Related Services for that Public Improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers or Land Surveyors.

(2) Tier One. State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in OAR 137-048-0210 (Informal Selection Procedure) and 137-048-0220 (Formal Selection Procedure), or from among Architects, Engineers or Land Surveyors identified under OAR 137-048-0200 (Direct Appointment Procedure), and shall notify the Local Contracting Agency of the Architects, Engineers or Land Surveyors selected.

(3) Tier Two. In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering and Land Surveying Services or Related Services for Local Contracting Agency's Public Improvement; or

(b) Select an Architect, Engineer or Land Surveyor to perform the Architectural, Engineering and Land Surveying Services or Related Services for Local Contracting Agency's Public Improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a procurement or series of procurements or during the course of the procurement or series of procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular procurement and describe the process that the Local Contracting Agency will utilize for the particular procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the procurement. In the event of a multiple award under the terms of the applicable procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a procurement or series of procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer or Land Surveyor to perform the Architectural, Engineering and Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the procurement document, as part of the tier two selection process.

(4) State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer or Land Surveyor in accordance with the negotiation provisions in OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to contract directly with Architects, Engineers or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.125
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0300
Prohibited Payment Methodology; Purchase Restrictions

(1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(2) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to Contractor for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract.

(3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering and Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering and Land Surveying Services or Related Services under a Contract with Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see OAR 137-049-0670 and 137-049-0680).

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to Consultant pursuant to applicable law governing the award of such contracts.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0310
Expired or Terminated Contracts; Reinstatement

(1) If a Contracting Agency enters into a Contract for Architectural, Engineering and Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:

(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering and Land Surveying Services or Related Services required under the contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or

(b) Terminated Contracts. If the Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same

Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering and Land Surveying Services or Related Services not completed under the contract as adjusted to reflect a material alteration of the Project.

(2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts.; and

(c) Result in a Contract that is still within the scope of the final form of the original procurement document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-048-0320
Contract Amendments

(1) Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the final form of the original procurement document and that the amendment would not materially impact the field of competition for the Architectural, Engineering and Land Surveying Services or Related Services described in the final form of the original procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the final form of the original procurement document if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, that affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0100
Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction Services that are not Public Improvements. Model Rules that apply specifically to Public Improvement Contracts are so identified.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Model Rules).

(3) These division 49 Model rules apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0120
Definitions

(1) "**Conduct Disqualification**" means a Disqualification pursuant to ORS 279C.440.

(2) "**Disqualification**" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with OAR 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) "**Foreign Contractor**" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 137-049-0480.

(4) "**Notice**" means any of the alternative forms of public announcement of Procurements, as described in OAR 137-049-0210.

(5) "**Work**" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0130
Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, ORS 279A.030 on federal law overrides or ORS 279A.100 on affirmative action. Also see OAR 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0140
Contracts for Construction Other Than Public Improvements

(1) Procurement Under ORS Chapter 279B. Pursuant to ORS 279C.320, Public Contracts for construction Services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(6) and OAR 137-049-0150, may be procured and amended as general trade Services under the provisions of ORS Chapter 279B rather than under the provisions of ORS Chapter 279C and these division 49 rules.

(2) Application of ORS Chapter 279C. Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.320
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0150
Emergency Contracts; Bidding and Bonding Exemptions

(1) **Emergency Declaration**. Pursuant to ORS 279C.335(6) and this rule, a Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a Written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall exempt the Public Contract from the competitive bidding requirements of ORS 279C.335(1) and shall thereafter be kept on file as a public record.

(2) **Competition for Contracts**. The Contracting Agency shall ensure competition for an Emergency Contract as reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointment without competition in cases of extreme necessity, in whatever Solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) **Contract Scope**. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Contract Modification**. Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(6) **Excusing Bonds**. Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See OAR 137-049-0815 and BOLI rules at 839-025-0015.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335(5) & 279C.380(4)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0160
Intermediate Procurements; Competitive Quotes and Amendments

(1) **General**. Public Improvement Contracts estimated by the Contracting Agency not to exceed $100,000, or not to exceed $50,000 in the case of Contracts for highways, bridges and other transportation projects, may be Awarded in accordance with intermediate level procurement procedures for competitive quotes established by this rule.

(2) **Selection Criteria**. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes**. Contracting Agencies shall utilize Written requests for quotes whenever reasonably practicable. Written Request for Quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required**. Contracting Agencies shall seek at least three competitive quotes, and keep a Written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a Written record of the effort made to obtain those quotes.

(5) **Award**. If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a Written record of the basis for Award.

(6) **Price Increases**. Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to OAR 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments**. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065
Stats. Implemented: Temporary provisions relating to competitive quotes were not codified but compiled as Legislative Counsel notes following ORS 279C.410.
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0200
Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information.

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See OAR 137-049-0300 regarding facsimile Bids or Proposals and OAR 137-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and OAR 137-049-0360. For timing issues relating to Addenda, see OAR 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a.";

(K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 137-049-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-049-0440(3));

(N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See OAR 137-049-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 137-049-0360.

(b) Evaluation Process:

(A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon the Contracting Agency's finding that it is in the public interest to do so;

(B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of competitive Proposals is authorized under ORS 279C.335 and OAR 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of OAR 137-049-0650; and

(c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2);

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) Fee paid to BOLI (ORS 279C.830(2));

(P) BOLI Public Works bond (ORS 279C.830(3))

(Q) Retainage (ORS 279C.550 to 279C.570);

(R) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(S) Contractor's relations with subcontractors (ORS 279C.580);

(T) Notice of claim (ORS 279C.605);

(U) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(V) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.110(4), 279A.120, 279C.365, 279C.370, 279C.390, 279C.505 - 580, 279C.605, 305.385, 468A.720, 701.005 & 701.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0210
Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. A Contracting Agency shall furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing Notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing Notice on the Contracting Agency's Internet Web site.

(2) Advertising. Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Authority for that Contracting Agency has exempted the Solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) A Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of $125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Contracting Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276(a)).

(3) Minority, Women Emerging Small Business. State Contracting Agencies shall provide timely notice of all Solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds $5,000. See ORS 200.035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360 & 200.035
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0220
Prequalification of Offerors

(1) **Prequalification**. Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. A Contracting Agency may, by rule, resolution, ordinance or other law or regulation, require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) Permissive Prequalification. A Contracting Agency may prequalify a Person for the Contracting Agency's Solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a Solicitation to that list.

(2) **Prequalification Presumed**. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency. (See, OAR 137-049-0390(2) regarding standards of responsibility.)

(4) **Notice of Denial**. If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.430 & 279C.435
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0260
Request for Clarification or Change; Solicitation Protests

(1) **Clarification**. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(2) **Request for Change**.

(a) Delivery. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror shall mark its request for change as follows:

(i) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) **Protest**.

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) **Contracting Agency Response**. The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under OAR 137-049-0260 or cancel the Solicitation under OAR 137-049-0270.

(5) **Extension of Closing**. If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.345 & 279C.365
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0280
Offer Submissions

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive bidding, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-049-0410. The Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) In competitive Proposals, the Solicitation Document shall describe whether Offers are to be made and considered as "Firm Offers" that may be accepted without negotiation, as in the case of competitive bidding, or whether Offers are subject to discussion, negotiation or otherwise are not to be considered as final offers. See OAR 137-049-0650 on Requests for Proposals and OAR 137-049-0290 on Bid or Proposal Security.

(2) Responsive Offer. A Contracting Agency may Award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to OAR 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms under OAR 137-049-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.

(5) Instructions. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(7) Documents. An Offeror shall provide the Contracting Agency with all documents and Descriptive Literature required under the Solicitation Document.

(8) Facsimile or Electronic Submissions. If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(9) Product Samples and Descriptive Literature. A Contracting Agency may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) Identification of Offers

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) Receipt of Offers. The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0290
Bid or Proposal Security

(1) **Security Amount**. If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required performance bond, payment bond and any required proof of insurance. See ORS 279C.365(4) and 279C.385.

(2) **Requirement for Bid Security (Optional for Proposals)**. Unless a Contracting Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See ORS 279C.365(5). The Contracting Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Contracting Agencies may require Proposal security in RFPs when Award of a Public Improvement Contract may be made without negotiation following receipt of a Firm Offer as described in OAR 137-049-0280(1)(b). See ORS 279C.400(5).

(3) **Form of Bid or Proposal Security**. A Contracting Agency may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) **Return of Security**. A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been

provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.385 & 279C.390
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0300
Facsimile Bids and Proposals

(1) **Contracting Agency Authorization**. A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency shall not authorize facsimile Offers unless the Contracting Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

(a) To receive, identify, record and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document**. In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a Request for Quotes) the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer. ";

(e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0310
Electronic Procurement

(1) **General**. Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of $125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures**. In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with OAR 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C requirements for Written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation**. Nothing in this rule shall be construed as prohibiting Contracting Agencies from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0320
Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications**. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with OAR 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) **Withdrawals**.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation**. The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360(2), 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0330
Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) **Receipt**. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording**. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to OAR 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) **Availability**. After Opening, the Contracting Agency shall make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0360
First-Tier Subcontractors; Disclosure and Substitution

(1) Required Disclosure. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed $100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least $15,000; or

(b) $350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, the Contracting Agency shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this rule, a Contracting Agency in its Solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:"Instructions for First-Tier Subcontractor DisclosureBidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than $100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to:

(A) 5% of the project Bid, but at least $15,000; or

(B) $350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

(i) The subcontractor's name;

(ii) The category of Work that the subcontractor would be performing, and

(iii) The dollar value of the subcontract. If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see OAR 137-049-0360)."

(4) Submission. A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two working hours after Bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) Contracting Agency Role. Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.370, 279C.585, 279C.590 & 279C.835
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0370
Disqualification of Persons

(1) **Authority**. A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform Work under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against minority, women or emerging small business enterprises in awarding a subcontract under a contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify**. The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

(g) State that the Person may be represented by legal counsel.

(3) **Hearing**. The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely request. The Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(4) **Notice of Disqualification**. The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.065, 200.075, 279C.440, 279C.445, 279C.450 & 279A.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0380
Bid or Proposal Evaluation Criteria

(1) **General**. A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See OAR 137-049-0390, and Rules for Alternative Contracting Methods at OAR 137-049-0600 to 137-049-0690.

(2) **Bid Evaluation Criteria**. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.

(b) Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See OAR 137-049-0350(2)(b).

(3) **Proposal Evaluation Criteria**. If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See OAR 137-049-0650, 137-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0390
Offer Evaluation and Award; Determination of Responsibility

(1) **General**. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract, see ORS 279C.375(3)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120) education service district (Oregon Laws 2005, Chapter 413). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(2) **Determination of Responsibility**. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has a satisfactory record of contract performance. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-049-0370 may be used to determine an Offeror's integrity. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is qualified legally to contract with the Contracting Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting Agency Determinations.** Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) **Contracting Agency Evaluation**. The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions**.

(a) The Contracting Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) **Evaluation of Bids**. The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) **Evaluation of Proposals**. See OAR 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335, 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0395
Notice of Intent to Award

(1) **Notice**. At least seven days before the Award of a Public Improvement Contract, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under $5,000), intermediate (informal com-

petitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).

(2) **Form and Manner of Posting**. The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.

(3) **Finalizing Award**. The Contracting Agency's Award shall not be final until the later of the following:

(a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

(b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

(4) **Prior Notice Impractical**. Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth,: ORS 279A.065
Stats. Implemented: ORS 279C.375
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0400
Documentation of Award; Availability of Award Decisions

(1) **Basis of Award**. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Solicitation file.

(2) **Contents of Award Record for Bids**. The Contracting Agency's record shall include:

(a) All submitted Bids;

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) **Contents of Award Record for Proposals**. Where the use of Requests for Proposals is authorized as set forth in OAR 137-049-0650, the Contracting Agency's record shall include:

(a) All submitted Proposals.

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the Contracting Agency permitted negotiations in accordance with 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.

(4) **Contract Document**. The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) **Bid Tabulations and Award Summaries**. Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) **Availability of Solicitation Files**. The Contracting Agency shall make completed Solicitation files available for public review at the Contracting Agency.

(7) **Copies from Solicitation Files**. Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

(8) **Minority, Women Emerging Small Business**. State Contracting Agencies shall provide timely notice of Contract Award to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds $5,000. See ORS 200.035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0420
Negotiation With Bidders Prohibited

(1) **Bids**. Except as permitted by ORS 279C.340 and OAR 137-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the resulting Contract only by change order or amendment to the Contract in accordance with OAR 137-049-0910.

(2) **Requests for Proposals**. A Contracting Agency may conduct discussions or negotiations with Proposers only in accordance with the requirements of OAR 137-049-0650.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.340 & 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0430
Negotiation When Bids Exceed Cost Estimate

(1) **Generally**. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of OAR 137-049-0360 do not apply to negotiations under this rule.

(2) **Definitions**. The following definitions apply to this administrative rule:

(a) "Cost Estimate" means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in OAR 137-049-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) "Project" means a Public Improvement.

(d) "Value Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) **Rejection of Bids**. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.

(4) **Scope of Negotiations**. Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.

(5) **Discontinuing Negotiations**. The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(6) **Limitation**. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) **Public Records**. To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & 279A.065
Stats. Implemented: ORS 279C.340
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0440
Rejection of Offers

(1) **Rejection of an Offer**.

(a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications);

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

(D) Offers Work that fails to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Documents;

(G) Is not in substantial compliance with all prescribed public Solicitation procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under section 3 of this rule;

(H) Is not Responsible. See OAR 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.

(2) **Form of Business**. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 137-049-0370.

(3) **Certification of Non-Discrimination**. The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Rejection of all Offers**. A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(5) **Criteria for Rejection of All Offers**. The Contracting Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the Solicitation in accordance with OAR 137-049-0270; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, 279C.380, 279C.395, 279A.105 & 279A.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0450
Protest of Contractor Selection, Contract Award

(1) **Purpose**. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision.

(2) **Notice of Competitive Range**. Unless otherwise provided in the RFP, when the competitive Proposal process is authorized under OAR 137-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

(a) 10 Days after the date of the notice, unless otherwise provided therein; or

(b) Until the Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award**. The Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided by OAR 137-049-0395.

(4) **Right to Protest Award**.

(a) An adversely affected or aggrieved Offeror may submit to the Contracting Agency a Written protest of the Contracting Agency's intent to Award within seven Days after issuance of the notice of intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were nonresponsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) **Right to Protest Competitive Range**.

(a) An adversely affected or aggrieved Proposer may submit to the Contracting Agency a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at OAR 137-049-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests**. The head of the Contracting Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision**. If a protest is not settled, the head of the Contracting Agency, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award**. The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, 279C.380, 279C.385 & 279C.460
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0460
Performance and Payment Security; Waiver

(1) **Public Improvement Contracts**. Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the Contracting Agency's Contract Review Authority exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See ORS 279C.380(5). Under 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see OAR 137-049-0815 and BOLI rules at OAR 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts**. A Contracting Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond**. The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) **Time for Submission**. The apparent successful Offeror must promptly furnish the required performance security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, 279C.380 & 279C.390
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0610
Definitions for Alternative Contracting Methods

The following definitions shall apply to these OAR 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) **Alternative Contracting Methods** means innovative Procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction Work is obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in these OAR 137-049-0600 to 137-049-0690 rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under these OAR 137-049-0600 to 137-049-0690 rules.

(2) **Construction Manager/General Contractor** (or "CM/GC") means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the Contracting Agency under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Contracting Agency, architect/engineers and other consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(3) **Design-Build** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and Work necessary to both design and construct the project.

(4) **Energy Conservation Measures** (or "ECMs") (also known as "energy efficiency measures") means, as used in ESPC Procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these OAR 137-049-0600 to 137-049-0690 rules, use of either or both of the terms "building" or "structure" shall be deemed to include existing energy, water and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures, for purposes of these OAR 137-049-0600 to 137-049-0690 rules.

(5) **Energy Savings Guarantee** means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the Contracting Agency that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the Contracting Agency in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the Contracting Agency after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(6) **Energy Savings Performance Contract** (or "ESPC") means a Public Improvement Contract between a Contracting Agency and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(7) **Guaranteed Maximum Price** (or "GMP") means the total maximum price provided to the Contracting Agency by the Contractor, and accepted by the Contracting Agency, that includes all reimbursable costs of and fees for completion of the Contract Work, as defined by the Public Improvement Contract, except for material changes in the scope of Work. It may also include particularly identified contingency amounts.

(8) **Measurement and Verification** (or "M & V") means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(9) **Project Development Plan** means a secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

(10) **Qualified Energy Service Company** (or "ESCO") means, as used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the Contracting Agency; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(11) **Technical Energy Audit** means, as used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the Contracting Agency of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy

Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0620
Use of Alternative Contracting Methods

(1) **Competitive Bidding Exemptions**. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Contracting Agency rules. Use of Alternative Contracting Methods may be directed by a Contracting Agency's Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and these OAR 137-049-0600 to 137-049-0690 rules. See OAR 137-049-0630 regarding required Findings and restrictions on class exemptions.

(2) **Energy Savings Performance Contracts**. Unlike other Alternative Contracting Methods covered by OAR 137-049-0600 to 137-049-0690, ESPCs are exempt from the competitive bidding requirement for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), if the Contracting Agency complies with the procedures set forth in OAR 137-049-0600 to 137-049-0690 related to the Solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

(3) **Post-Project Evaluation**. ORS 279C.355 requires that the Contracting Agency prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Contracting Agency's Contract Review Authority within 30 Days of the date the Contracting Agency "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.355 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0630
Findings, Notice and Hearing

(1) **Cost Savings Factors**. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from competitive bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate".

(2) **Required Information**. Likewise, the statutory definition of "Findings" at ORS 279.330 means the justification for a Contracting Agency conclusion that includes, "but is not limited to," information regarding eight identified areas.

(3) **Addressing Cost Savings**. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(4) **Favoritism and Competition**. The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) **Descriptions**. Findings supporting a competitive bidding exemption must describe with specificity the Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the Contracting Agency. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(6) **Class Exemptions**. In making the findings supporting a class exemption the Contracting Agency shall clearly identify the class with respect to its defining characteristics. Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values or method of procurement or other factors that distinguish the limited and related class of Projects from a Contracting Agency's overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

(7) **Public Hearing**. Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency shall give notice and hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's draft Findings.

(8) **Prior Review of Draft Findings**. State Contracting Agencies shall submit draft Findings to their Contract Review Authority for review and concurrence prior to advertising the public hearing required by ORS 279C.335(5). State Contracting Agencies shall also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0640
Competitive Proposals; Procedure

Contracting Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.400 to 279C.410 and OAR 137-049-0600 to 137-049-0690, unless other applicable statutes control a Contracting Agency's use of competitive Proposals for Public Improvement Contracts. Also see the subdivision of rules in this division entitled Formal Procurement Rules, OAR 137-049-0200 to 137-049-0480, and RFP related rules under the Alternative Contracting Methods subdivision at OAR 137-049-0640 to 137-049-0660. For ESPCs, the following RFP process shall be utilized if a Contracting Agency desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in OAR 137-049-0600 to 137-049-0690 includes the following steps:

(1) **Proposal Evaluation**. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. For ESPC Proposal evaluations, the Contracting Agency may provide in the RFP that qualifications-based evaluation factors will outweigh the Contracting Agency's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS 279C.305.

(2) **Evaluation Factors**.

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key

personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a subcontractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the Contracting Agency and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(3) **Contract Negotiations**. Contract terms may be negotiated to the extent allowed by the RFP and OAR 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See OAR 137-049-0650. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of OAR 137-049-0680 below.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0645
Requests for Qualifications (RFQ)

As provided by ORS 279C.410(9), Contracting Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, Contracting Agencies shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the qualified firms in the RFQ process. In such cases the Contracting Agencies shall also provide within the RFQ a protest provision substantially in the form of OAR 137-049-0450(5) regarding protests of the Competitive Range. Thereafter, contracting agencies may distribute RFPs to those qualified firms without further advertisement of the solicitation.

Stat. Auth.: ORS 279C.279A.065
Stats. Implemented: ORS 279C.410
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0650
Requests for Proposals (RFP)

(1) **Generally**. The use of competitive Proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335 (1), OAR 137-049-0130 and 137-049-0600 to 137-049-0690. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and OAR 137-049-0640 regarding competitive Proposal procedures.

(2) **Solicitation Documents**. In addition to the Solicitation Document requirements of OAR 137-049-0200, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:

(a) The Contracting Agency shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 137-049-0640. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the Contracting Agency;

(b) When the Contracting Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the Contracting Agency must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Contracting Agency has identified as authorized for negotiation. The Contracting Agency must describe the evaluation and discussion or negotiation process, including how the Contracting Agency will establish the Competitive Range;

(c) The anticipated size of the Competitive Range shall be stated in the Solicitation document, but may be decreased if the number of Proposers that submit responsive Proposals is less that the specified number, or may be increased as provided in OAR 137-049-0650(4)(a)(B);

(d) When the Contracting Agency intends to Award Contracts to more than one Proposer, the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Contracting Agency shall also include the criteria it will use to determine how the Contracting Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

(3) **Evaluation of Proposals**.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process for discussions or negotiations that is outlined and explained in subsections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(b) Discussions; Negotiations. If the Contracting Agency permitted discussions or negotiations in the Request for Proposals, the Contracting Agency shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency shall establish a negotiation team tailored for the acquisition. The Contracting Agency's team may include legal, technical and negotiating personnel.

(c) Cancellation. Nothing in this rule shall restrict or prohibit the Contracting Agency from canceling the Solicitation at any time.

(4) **Competitive Range; Protest; Award**.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the Solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency will determine and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Protesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-049-0450.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these rules expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450.

(ii) After the protest period provided in accordance with OAR 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the Solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The Contracting Agency shall provide Written notice to all Proposers in the Competitive Range of the Contracting Agency's intent to Award the Contract. An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450. After the protest period provided in accordance with that rule expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations.

(6) **Negotiations**.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.

(c) Terminating Negotiations. At any time during discussions or negotiations that the Contracting Agency conducts in accordance with this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(d) Continuing Negotiations. If the Contracting Agency terminates discussions or negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.400 - 279C.410
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0660
RFP Pricing Mechanisms

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive bidding. Alternatively, a cost reimbursement Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for

design changes during preliminary design rather than after final design Work has been completed.

(a) If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.

(b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0670
Design-Build Contracts

(1) **General**. The Design-Build form of contracting, as defined at OAR 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a “Biddable” design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) **Authority**. Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these OARs 137-049-0600 to 137-049-0690 rules. See particularly OAR 137-049-0620 on “Use of Alternative Contracting Methods” and OAR 137-049-0680 pertaining to ESPCs.

(3) **Selection**. Design-Build selection criteria may include those factors set forth above in OAR 137-049-0640(2)(a), (b) and (c).

(4) **QBS Inapplicable**. Because the value of construction Work predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant Personal Services is not applicable.

(5) **Licensing**. If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(6) **Performance Security**. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety’s obligation on performance bonds, or the Bidder’s obligation on cashier’s or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction Work, extends only to the provision of Personal Services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) **Contract Requirements**. Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:

(a) Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract shall clearly identify the extent to which the Contracting Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) Warranties. The Contract shall clearly identify any express warranties made to the Contracting Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the Contracting Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.110 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0680
Energy Savings Performance Contracts (ESPC)

(1) **Generally**. These OAR 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agencies to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method provided for by these OAR 137-049-0600 to 137-049-0690 rules, the Contracting Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any Contracting Agency not subject to all the requirements of ORS 279C.335.

(2) **ESPC Contracting Method**. The ESPC form of contracting, as defined at OAR 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Contracting Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority**. Contracting Agencies desiring to pursue an exemption from the competitive bidding requirements of ORS 279C.335 (and, if appli-

cable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of these OAR 137-049-0600 to 137-049-0690 rules.

(4) **No Findings Required**. A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these OAR 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Contracting Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these OAR 137-049-0600 to 137-049-0690 rules.

(5) **Selection**. ESPC selection criteria may include those factors set forth above in OAR 137-049-0640(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) **QBS Inapplicable**. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) **Licensing**. If the ESCO is not an Oregon licensed design professional, the Contracting Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) **Performance Security**. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these “design and related services” include conventional design services, commissioning services, training services for the Contracting Agency’s operations and maintenance staff, and any similar Personal Services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal Services or Work associated with the ESCO’s Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) “design and related services.” Nevertheless, a Contracting Agency may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO’s Energy Savings Guarantee, if the Contracting Agency so provides in the RFP.

(9) **Contracting Requirements**. Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multiphase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO’s Energy Savings Guarantee for the project.

(B) The various phases of the ESCO’s Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Contracting Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in OAR 137-040-0560(7) above.

(c) Pricing Alternatives. The Contracting Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Contracting Agency, the ESCO’s M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency’s future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of Work. The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a Solicitation under these 137-049-0600 to 137-049-0690 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.110 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0690
Construction Manager/General Contractor (CM/GC)

(1) **General**. The CM/GC form of contracting, as defined at OAR 137-049-0610(2), is a technically complex project delivery system. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a “single point of responsibility” under which the Contractor is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the Contracting Agency and design professional, although in CM/GC there is a separate contract between the Contracting Agency and design professional. In order to utilize the CM/GC method, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

(a) Time Savings. The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The Contracting Agency may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. Early Contractor input during the design process is expected to contribute to significant cost savings. The Contracting Agency may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The Contracting Agency shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) Technical Complexity. The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the Contracting Agency, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction Personal Services. The Contracting Agency may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) **Authority**. Contracting Agencies shall use the CM/GC form of contracting only in accordance with the requirements of these rules. See particularly OAR 137-049-0620 on "Use of Alternative Contracting Methods".

(3) **Selection**. CM/GC selection criteria may include those factors set forth above in OAR 137-049-0640(2)(b).

(4) **Basis for Payment**. The CM/GC process adds specified Construction Manager Personal Services to traditional General Contractor Work, requiring full Contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and Personal Services rendered, which together shall not exceed the GMP. See GMP definition at OAR 137-049-0610(7) and Pricing Mechanisms at OAR 137-049-0660.

(5) **Contract Requirements**. Contracting Agencies shall conform their CM/GC contracting practices to the following requirements:

(a) Setting the GMP. The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP scope.

(b) Adjustments to the GMP. The Contract shall clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP amendment.

(c) Cost Savings. The Contract shall clearly identify the disposition of any cost savings resulting from completion of the Work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the Contracting Agency's benefit. (Note that unless there is a clearly articulated reason for sharing such cost savings, they should accrue to the Contracting Agency.)

(d) Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.

(e) Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

(f) Fee. Compensation for the CM/GC's Personal Services and Work shall include a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.

(g) Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).

(h) Controlled Insurance Programs. For projects anticipated to exceed $75 Million, the Contract shall clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract shall clearly identify (1) anticipated cost savings from reduced premiums, claims reductions and other factors, (2) the allocation of cost savings, and (3) safety responsibilities and/or incentives.

(i) Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

(A) Early Procurement of materials and supplies;

(B) Early release of Bid packages for such things as site development; and

(C) Other advance Work related to critical components of the Contract.

(j) Subcontractor Selection. The Contract shall clearly describe the methods by which the CM/GC shall publicly receive, open and record Bids or price quotations, and competitively select subcontractors to perform the Contract Work based upon price, as well as the mechanisms by which the Contracting Agency may waive those requirements. The documents shall also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the Work, including, at a minimum, advance notice to the public of the CM/GC's intent to compete and a public Opening of Bids or quotations by an independent party.

(k) Subcontractor Approvals and Protests. The Contract shall clearly establish whether the Contracting Agency must approve subcontract awards, and to what extent, if any, the Contracting Agency will resolve Procurement protests of subcontractors and suppliers. The related procedures and reporting mechanisms shall be established with certainty, including whether the CM/GC acts as the Contracting Agency's representative in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the Contracting Agency shall retain the right to monitor the subcontracting process in order to protect Contracting Agency's interests.

(l) CM/GC Self-Performance. Whenever feasible, the Contract shall establish the elements of Work the CM/GC may self-perform without competition, including, for example, the Work of the job-site general conditions. In the alternative, the Contract shall include a process for Contracting Agency approval of CM/GC self-performance.

(m) Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 297C.335 & 279C.380(2)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0815
BOLI Public Works Bond

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth: ORS 279A.065
Stats. Implemented: ORS 279C.830
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0820
Retainage

(1) **Withholding of Retainage**. Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Deposit in interest-bearing accounts**. Upon request of the Contractor, a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Contracting Agency. Earnings on such account shall accrue to the Contractor. State Contracting Agencies shall establish the account through the State Treasurer.

(3) **Alternatives to cash retainage**. In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of securities:

(A) The Contractor may deposit bonds or securities with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. In such event, the Contracting Agency shall reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage shall be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or its Contracting Agencies.

(iii) Obligations of any corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to

the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(4) **Recovery of costs**. A Contracting Agency may recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final payment.

(5) **Additional Retainage When Certified Payroll Statements Not Filed**. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0860
Public Works Contracts

(1) **Generally**. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) **Required Contract Conditions**. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

(f) Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

(3) **Requirements for Specifications**. The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The prevailing state rate of wage, as required by ORS 279C.830(1)(a), physically contained within or attached to hard copies of procurement Specifications, and by a downloadable direct link to the specific wage rates that apply to the project (either on the Contracting Agency web site or the BOLI web site) when procurement Specifications are also made available in electronic format.

(b) If applicable, the federal prevailing rate of wage and information concerning whether the state or federal rate is higher in each trade or occupation in each locality, as determined by BOLI in a separate publication. See BOLI rules at OAR 839-025-0020 and 0035.

(c) Reference to payment of fee to BOLI, as required by ORS 279C.830(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.800 - 279C.870
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0870
Specifications; Brand Name Products

(1) **Generally**. The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) **Equivalents**. A Contracting Agency may identify products by brand names as long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.345
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0900
Contract Suspension; Termination Procedures

(1) **Suspension of Work**. In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default**.

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency**. A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work**. Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative**. The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.650, 279C.326, 279C.655, 279C.660, 279C.665 & 279C.670
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

137-049-0910
Changes to the Work and Contract Amendments

(1) **Definitions for Rule**. As used in this rule:

(a) "Amendment" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed Work.

(2) **Changes Provisions**. Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) **Change Order Authority**. Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Model Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments**. Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with this rule and other applicable legal requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279C.400(1)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

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Adm. Order No.: DOJ 21-2005
Filed with Sec. of State: 12-27-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Amended: 137-008-0010
Rules Repealed: 137-008-0010(T)
Subject: The rule establishes the fees the Department may charge to reimburse it for costs of providing public records and also establishes the prices of Department publications. Amendments reflect changes to hourly billing rates of Department staff, upon which the Department's Legislatively Approved Budget was based, changes to ORS 192.440(3), as enacted by the 2005 Legislative Assembly, and an increase in the price of the Attorney General's Public Records and Meetings Manual. This permanent rule will repeal and replace a temporary version of the same rule that was filed November 2, 2005, which included the same amendments to the staff billing rate and price of the Public Records and Meetings Manual, but did not include the amendments to subsections (2)(g) and (3), which reflect 2005 legislative changes to ORS 192.440(3).
Rules Coordinator: Carol Riches—(503) 378-6313

137-008-0010
Fees for Public Records and Publications

(1)(a) The Department of Justice may charge a fee reasonably calculated to reimburse the department for costs of providing and conveying copies of public records. The department shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the Department uses the services of an outside facility or contractor to photocopy requested records, the department shall charge the actual costs incurred.

(b) "Page" refers to the number of copies produced, either 8 1/2 x 11 or 8 1/2 x 14. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy consists of two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per page fee.

(c) "Normal and reasonable" staff time is 10 minutes or less per request.

(2) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the department's hourly billing rate, by position, as follows:

(a) Assistant Attorney General; $111/hr;

(b) Alternative Dispute Resolution Coordinator; $80/hr;

(c) Investigator; $76/hr;

(d) Paralegal; $69/hr;

(e) Law Clerk; $46/hr;

(f) General Clerical; $44/hr;

(g) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents. The Department shall not charge for time spent by Assistant Attorneys General in determining the application of the provisions of ORS 192.410 to 192.505.

(3) The Department shall notify a requestor of the estimated costs of making records available for inspection or providing copies of records to the requestor. If the estimated costs exceed $25, the Department shall provide written notice and shall not act further to respond to the request unless and until the requestor confirms that the requestor wants the Department to proceed with making the public records available. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(4) The Department may charge a fee reasonably calculated to reimburse the department for costs of department publications, Oregon District Attorneys Association publications prepared by the Department and other Department materials intended for distribution. A listing of such available publications and materials shall be maintained by the Department librarian. The Department shall charge the following for its regular publications:

(a) Attorney General's Public Law Conference Papers; $65;

(b) Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA; $40;

(c) Attorney General's Public Contracts Manual; $65;

(d) Attorney General's Public Records and Meetings Manual; $25;

(e) Attorney General Opinions:

(A) Bound Volumes; Volume 20 (1940-42) through Volume 49 (1997-2001) including 2-volume index; $921;

(B) Future Bound Volumes; $70;

(C) Slip Opinion Service (yearly); $60;

(D) Letters of Advice Index, 1969-83; $20;

(E) Letters of Advice Index, 1983-88; $40;

(F) Letters of Advice Index, 1988-93; $40;

(G) Future Letters of Advice Indices; $40.

Stat. Auth.: ORS 192.430(2) & 192.440(3)
Stats. Implemented: ORS 192.440(3)
Hist.: JD 1-1982, f. & ef. 1-7-82; JD 1-1983(Temp), f. & ef. 5-3-83; JD 7-1983, f. & ef. 11-2-83; JD 4-1984(Temp), f. & ef. 11-7-84; JD 1-1985, f. & ef. 1-23-85; JD 3-1986, f. & ef. 1-27-86; JD 2-1990, f. & cert. ef. 2-14-90; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 11-2001, f. & cert. ef. 12-10-01; DOJ 16-2003, f. & cert. ef. 12-9-03; DOJ 18-2003(Temp), f. & cert. ef. 12-10-03 thru 6-1-04; DOJ 13-2004(Temp), f. & cert. ef. 11-1-04 thru 1-31-05; DOJ 1-2005, f. & cert. ef. 1-13-05; DOJ 2-2005, f. & cert. ef. 2-1-05; DOJ 15-2005(Temp), f. & cert. ef. 11-2-05 thru 4-29-06; DOJ 21-2005, f. 12-27-05, cert. ef. 1-1-06

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Rule Caption: Child Attending School, Confidentiality, Judgments, Judgment Liens, Spousal.
Adm. Order No.: DOJ 1-2006
Filed with Sec. of State: 1-3-2006
Certified to be Effective: 1-3-06
Notice Publication Date: 11-1-05
Rules Adopted: 137-055-2045, 137-055-6021
Rules Amended: 137-055-1020, 137-055-1040, 137-055-1060, 137-055-1070, 137-055-1090, 137-055-1100, 137-055-1120, 137-055-1140, 137-055-1145, 137-055-1160, 137-055-1180, 137-055-1600, 137-055-2060, 137-055-2140, 137-055-3220, 137-055-3240, 137-055-3280, 137-055-3400, 137-055-3420, 137-055-3430, 137-055-3440, 137-055-3480, 137-055-3490, 137-055-3640, 137-055-3660, 137-055-4060, 137-055-4080, 137-055-4100, 137-055-4110, 137-055-4120, 137-055-4130, 137-055-4160, 137-055-4300, 137-055-4320, 137-055-4420, 137-055-4450, 137-055-4520, 137-055-4540, 137-055-4560, 137-055-5020, 137-055-5025, 137-055-5110, 137-055-5120, 137-055-5240, 137-055-5400, 137-055-5420, 137-055-5510, 137-055-5520, 137-055-6025, 137-055-6040, 137-055-6200, 137-055-6210, 137-055-6220, 137-055-6260, 137-055-6280
Rules Repealed: 137-055-5125, 137-055-1070(T), 137-055-1120(T), 137-055-1140(T), 137-055-1160(T), 137-055-1180(T), 137-055-3240(T), 137-055-3420(T), 137-055-3430(T), 137-055-3440(T), 137-055-3490(T), 137-055-3500(T), 137-055-4120(T), 137-055-4540(T), 137-055-5020(T), 137-055-5110(T), 137-055-5120(T), 137-055-5240(T), 137-055-5400(T), 137-055-5510(T), 137-055-5520(T), 137-055-6021(T), 137-055-6200(T)
Subject: Changes to OAR's 137-055-1020; 137-055-1040; 137-055-1060; 137-055-1070; 137-055-1090; 137-055-1100; 137-055-1120; 137-055-1140; 137-055-1160; 137-055-1180; 137-055-1600; 137-055-2060; 137-055-2140; 137-055-3220; 137-055-3240; 137-055-3280; 137-055-3400; 137-055-3420; 137-055-3430; 137-055-3440; 137-055-3480; 137-055-3490; 137-055-3640; 137-055-4060; 137-055-4080; 137-055-4100; 137-055-4110; 137-055-4120; 137-055-4130; 137-055-4160; 137-055-4300; 137-055-4320; 137-055-4420; 137-055-4520; 137-055-4540; 137-055-4560; 137-055-5020; 137-055-5025; 137-055-5110; 137-055-5120; 137-055-5240; 137-055-5400; 137-055-5420; 137-055-5510; 137-055-5520; 137-055-6025;

137-055-6040; 137-055-6200; 137-055-6210; 137-055-6220; 137-055-6260; 137-055-6280 reflect changes to ORS 107.108 through SB 1050. These changes make the child attending school a party, change the requirements to qualify as a child attending school and remove language which can now be found in the statute. Changes to OAR 137-055-1145 authorize release of obligee information to the state when state is obligee; 137-055-3660 limits the applicability of a GCSO/J finding if multiple judgments were entered prior to 1/1/04 and the later judicial judgment was given precedence over the administrative order; 137-055-4450 clarifies lump sum judgment attaches to real property and adds statutory reference for lien reinstatement; adoption of 137-055-2045 to reflect changes to spousal only cases resulting from HB2213; Adoption of 137-055-6021 reflects changes due to HB 1050 and the prior changes to 137-055-6020. Repeals 137-055-5125 due to changes to ORS 107.108.
Rules Coordinator: Shawn Brenizer—(503) 986-6240

137-055-1020
Child Support Program Definitions

The following definitions apply to OAR 137-055-1040 through 137-055-7190, inclusive:

(1) Unless otherwise stated, "administrator" means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator's or a district attorney's authorized representative.

(2) "Assignee" means the Department of Human Services (DHS), the Division of Child Support, Oregon Youth Authority (OYA) or equivalent agencies in any other state or Tribe to which support rights for a person are assigned.

(3) "Assignment" or "Assigned" means all or a portion of support payments owed to a person will be retained by an assignee if such person or beneficiary of such person is receiving assistance in the form of Temporary Assistance for Needy Families (TANF) cash assistance, foster care, or OYA services. Support payments will be distributed per OAR 137-055-6020. There is also an assignment of rights to medical support for reimbursement of health care costs for any person who has been granted medical assistance.

(4) "Beneficiary" means any child, spouse or former spouse for whom an obligor has been ordered (or has agreed) to pay support, under a court order, an administrative order, or a voluntary agreement.

(5) "Child Support Award" means a money award or administrative order that requires the payment of child support in installments. Prior to January 5, 2004, this was referred to as a money judgment.

(6) "Child Support Program" or "CSP" is the program authorized under title IV-D of the Social Security Act to provide child support enforcement services required by federal and state law. The CSP director in Oregon is the Administrator of the Division of Child Support. The CSP includes the Division of Child Support and those district attorneys that contract to provide services described in ORS 25.080.

(7) "Class Order" means a support order for multiple children that does not specify an amount of support per child and requires the payment of the entire amount until the last child attains majority or until the order is prospectively modified.

(8) "Court Order" means any judgment or order of the court requiring an obligor to provide child or spousal and/or health care coverage, for specified beneficiaries.

(9) "Court-ordered Amount", or "COA", means the periodic payment amount, usually monthly, ordered by administrative process or by a court for support. The COA can be either the amount for each beneficiary on a support case, or the total amount for all beneficiaries in a single support case.

(10) "Department of Human Services", or "DHS", is the state's health and human services agency. DHS is responsible for public assistance programs such as: Temporary Assistance for Needy Families (TANF), Food Stamps, child-protective services, foster care and adoption programs, the Oregon Health Plan and Medicaid.

(11) "District Attorney", or "DA", means the district attorney for an Oregon county. In most Oregon counties, the DA is responsible for providing support enforcement services, when requested, on all support cases where no support is assigned to the state.

(12) "Division of Child Support", or "DCS", is the Division of Oregon's Department of Justice that is responsible for:

(a) Establishing paternity, obtaining judgments for arrears, and for establishing and enforcing support obligations, on behalf of all children who:

(A) Are receiving or have formerly received TANF cash assistance, foster care, or OYA services, or who have support assigned to the State of Oregon;

(B) Are receiving TANF, or who have support assigned to another state, in cases where an obligor or alleged father resides or works in Oregon.; or

(C) Are under the enforcement jurisdiction of an Oregon county that has contracted its support enforcement responsibilities to DCS, in lieu of having the county District Attorney perform these responsibilities.

(b) Accounting and distribution of child support payments as the state disbursement unit.

(13) "Guidelines" refers to the guidelines, the formula, and related provisions established by DCS, in Oregon Administrative Rules 137-050-0320 through 137-050-0490, for determining child support award amounts in Oregon.

(14) "Income Withholding" means a judicial or administrative process under which an obligor's employer, trustee, or other provider of income is ordered to withhold a specified percentage, or a specified amount, from each and every paycheck or benefit payment of an obligor, for the purpose of paying current and/or past-due support. Income withholding is distinguished from garnishment as follows: income withholding will occur continuously under a single order and is not subject to claim of exemption; a garnishment occurs for only a limited duration under a single writ and is subject to certain exemptions provided by law.

(15) "IV-A" refers to Title IV-A of the Social Security Act which is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children (see "TANF"). Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the non-custodial parent, establish paternity and/or a child support order, and/or obtain child support payments.

(16) "IV-D" refers to Title IV-D of the Social Security Act which requires each state to create a program to locate non-custodial parents, establish paternity, establish and enforce child support obligations, and collect and distribute support payments. Recipients of IV-A (TANF), IV-E (foster care) and Oregon Youth Authority (OYA) assistance are referred to their state's IV-D child support program. States must also accept applications from families who do not receive assistance, if requested, to assist in collection of child support. Title IV-D also established the Federal Office of Child Support Enforcement.

(17) "IV-E" refers to Title IV-E of the Social Security Act which established a Federal-State program known as Foster Care that provides financial support to a person, family, or institution that is raising a child or children that is not their own. The funding for IV-E Foster Care programs is primarily from Federal sources.

(18) "Judgment Lien" means the effect of a judgment on real property for the county in which the judgment is entered, or such other county where the lien is recorded, and includes any support arrearage lien attaching to real property.

(19) "Judgment Remedy" means the ability of a judgment creditor to enforce a judgment, including enforcement through a judgment lien.

(20) "Legal proceeding" means any action related to the support order which requires service of documents on the parties.

(21) "Money Award" means a judgment or portion of a judgment that requires the payment of money. A money award will always refer to a sum certain and will not require a payment in installments.

(22) "Oregon Youth Authority", or "OYA", is the State of Oregon agency responsible for the supervision, management, and administration of state parole and probation services, community out-of-home placements, and youth correction facilities for youth offenders, and other functions related to state programs for youth corrections.

(23) "Party" means an obligor, obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, and includes any person who has been joined to the proceeding.

(24) "Support" means cash payments, health care coverage, or other benefits that a person has been ordered by a court or by administrative process, or has voluntarily agreed, to provide for the benefit and maintenance of another person.

(25) "Support Arrearage Lien" means a lien that attaches to real property when an installment becomes due under the terms of a support award and is not paid.

(26) "Support Award" means a money award or administrative order that requires the payment of child or spousal support in installments.

(27) "Support Order" means a judgment or order, whether temporary, final or subject to modification, which reflects an obligation to contribute to the support of a child, a spouse or a former spouse, and requires an obligor to provide monetary support, health care, arrears or reimbursement. A Support Order may include related costs and fees, interest, income withholding, attorney fees and other relief.

(28) "TANF" means "Temporary Assistance for Needy Families", a public assistance program which provides case management and cash assistance to low-income families with minor children. It is designed to promote personal responsibility and accountability for parents. The goal of the program is to reduce the number of families living in poverty through employment services and community resources. Title IV-A of the Social Security Act is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children.

(29) "Title XIX", popularly known as Medicaid, refers to Title XIX of the Social Security Act which mandates health care coverage by states for TANF recipients and certain other means-tested categories of persons. Within broad national guidelines which the federal government provides, each state: establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the rate of payment for services; and administers its own program.

Stat. Auth.: ORS 18.005, 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0001; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1040
"Party Status" in Court and Administrative Proceedings

(1) In any proceeding to establish, modify or enforce a paternity or support obligation initiated by the administrator (as defined in OAR 137-055-1020), the administrator represents only the interests of the state.

(2) In any action taken under ORS 25.080, the State of Oregon, the obligor, and the obligee are parties.

(3) In any action taken under ORS 25.080, for purposes of Oregon Administrative Rules, chapter 137, division 55, a child attending school as defined in ORS 107.108 and OAR 137-055-5110, is a necessary party to all legal proceedings.

Stat. Auth.:ORS 18.005, 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 23-1992, f. 8-14-92, cert. ef. 9-1-92; AFS 3-1994, f. & cert. ef. 2-1-94; AFS 18-1994, f. 8-25-94, cert. ef. 9-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0065; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1040; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1060
Uniform Application for Child Support Enforcement Services

(1) The administrator will provide a standard application form to any person requesting child support enforcement services. Except for the application form, the form required under section (3) of this rule, and any statements necessary to respond to inquiries about these forms, or as provided in OAR 137-055-5110, no other written or oral statements concerning an applicant's qualification for services nor any contract for service shall be offered.

(2) The application form must:

(a) Contain a statement that the applicant is requesting child support enforcement services including enforcement of health provisions;

(b) Require the applicant's signature and date of application.

(3) The administrator will provide a supplemental form to applicants for child support enforcement services, which includes the following information:

(a) The applicant's rights and responsibilities;

(b) An explanation of enforcement activities for which fees are charged;

(c) Policies on cost recovery; and

(d) Policies on distribution of collections.

(4) The standardized application form, and the supplemental form will be readily available to the public in each Child Support Program (CSP) office:

(a) The administrator will provide the standardized application form, and the supplemental form, upon request to any individual who requests services in person;

(b) When a request for child support enforcement services is made in writing or by telephone, the administrator will send the individual the standardized application form and the supplemental form, within five working days from the date the request is made.

(5) The administrator will accept an application as it is filed, on the day it is received.

(6) The administrator will create a case on the computerized system within two working days of receipt of the application providing circumstances beyond the control of the administrator do not occur.

(7) The administrator will provide the information required under section (3) of this rule:

(a) If the requesting individual or a beneficiary of such person is not receiving assistance in the form of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority (OYA) services, along with the standard application form;

(b) If the individual or beneficiary of such person receives assistance in the form of TANF cash assistance, Medicaid, foster care or OYA services, within five working days of referral from the Department of Human Services (DHS) or the OYA.

(8) Once an application for child support enforcement services is accepted, if necessary for establishment and/or enforcement purposes, the administrator will solicit additional relevant information by means of a form approved by the CSP.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 16-1994, f. 8-4-94, cert. ef. 12-1-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0043; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1060; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1070
Provision of Services

(1) For the purposes of this rule, the following definitions apply:

(a) "Full services case" means a case in which the full range of support enforcement services required under ORS 25.080(4) are provided;

(b) "Limited services case" means a case in which the provisions of ORS 25.080 do not apply and one or more collection, accounting, distribution or enforcement services are provided pursuant to state or federal law.

(2) When any Oregon judgment or support order for child and/or spousal support is received, the administrator will:

(a) If the order requires payment of child support or child and spousal support and seeks collection, accounting, distribution and enforcement services:

(A) Create a full services case on the Child Support Enforcement Automated System (CSEAS) if one does not already exist;

(B) Initiate appropriate enforcement action; and

(C) Send the parties the information required in OAR 137-055-1060(4);

(b) If the order requires payment of spousal support only and seeks collection, accounting, distribution and enforcement services, process the order pursuant to OAR 137-055-2045.

(c) If the order is silent, unclear or contradictory on the services to be provided and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry if one does not already exist; and

(B) Send the parties a letter explaining that no services will be provided and why. The letter must include a statement that the parties may apply for support enforcement services at any time if the order includes a provision for child support.

(d) If the order seeks only payment through the Department of Justice and no application or other written request for support enforcement services has been received:

(A) Create an information only case on the CSEAS for the state case registry, if one does not already exist, to receive and distribute payments in accordance with OAR 137-055-6021; and

(B) Send the parties a letter explaining that the program will only provide distribution of support payments and why. The letter must include a statement that a party may apply for support enforcement services at any time if the order includes a provision for child support.

(e) If the provisions of subsection (c) or subsection (d) apply and a party subsequently completes an application or other written request for support enforcement services, the administrator will process the application or request in accordance with OAR 137-055-1060.

(3) When a person applies for services under OAR 137-055-1060 for establishment or enforcement of a child support order, the case is a full services case.

(a) The administrator will perform all mandated services under state and federal law; and

(b) The administrator will determine which non-mandated services will be provided, but may consider input from the applicant in making that determination.

(4)(a) When a person applies for services under OAR 137-055-1060 and there is more than one parent who may be obligated to pay support, the applicant may apply for services:

(A) To establish and collect support from only one parent; or

(B) To establish and collect support from more than one parent.

(b) A separate application under OAR 137-055-1060 is required for each parent the applicant wishes to pursue.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020, 25.080, 25.140, 25.164 & 107.108
Hist.: AFS 20-2002, f. 12-20-02 cert. ef. 1-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1070; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1070; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1090
Good Cause

(1) For the purposes of OAR chapter 137, division 055, "good cause" means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. This definition specifically excludes good cause for not withholding as defined in ORS 25.396 and OAR 137-055-4060 and good cause found for distribution of support to other than a child attending school under ORS 107.108 and OAR 137-055-5110.

(2) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205, if TANF, Title IV-E or Medicaid benefits are being provided;

(b) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement II-E-1.5, if the child is in OYA's custody;

(c) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(d) The administrator when the provisions of subsections (a) through (c) of this section do not apply.

(3) When the provisions of subsection (2)(d) apply, the administrator will make a finding and determination of good cause when it is determined that provision of services is not in the best interest of the child and:

(a) The obligee makes a verbal or written claim that the provision of services may result in emotional or physical harm to the child or obligee; or

(b) The obligee completes and returns the good cause document contained in the Client Safety Packet.

(4) In determining whether providing services is in the best interest of the child, the administrator will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

(e) The extent of involvement of the child in the services sought.

(5) A finding and determination by the Administrator that good cause does not apply, may be appealed as provided in ORS 183.484.

(6) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(7) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(8) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.

(9)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet;

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide an address of record as provided in OAR 137-055-1180.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who originally claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(10)(a) If a request for services under ORS chapter 110 is received from another state and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA's custody and there has been a finding and determination of good cause, the administrator will:

(A) Notify the referring state of the finding and determination of good cause and request that the state consult with the obligee to determine whether good cause should still apply; and

(B) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring state and the administrator if there is an objection to proceeding; and

(C) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(D) Allow the obligee 30 days to provide an address of record as provided in OAR 137-055-1180.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligee's address is unknown, and the referring state advises that the finding and determination of good cause no longer applies, the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(11) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will notify the appropriate state agency of the previous finding and determination of good cause and:

(a) If TANF, Title IV-E or Medicaid benefits are being provided, DHS will, in consultation with the office which made the good cause finding and determination and as provided in DHS policy SS-PT-05-005, decide whether good cause still applies pursuant to OAR 413-100-0830, 461-135-1200, 461-135-1205, 461-120-0350 or 461-120-0360; or

(b) If the child is in OYA's custody, OYA will, in consultation with the office which made the good cause finding and determination and as provided in OYA Policy II-E-1.5, determine if the circumstances that created the good cause still exist and, if they do not, request that the agency which determined good cause remove the coding.

(12) When the provisions of section (11) apply, the administrator will not provide services unless and until good cause coding is removed by the agency who made the good cause finding and determination.

(13) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

(14) In any case in which a good cause finding and determination has been made, and a child attending school as defined in ORS 107.108 and OAR 137-055-5110 is a party to the case, the child attending school may file an application for services pursuant to OAR 137-055-1060, 137-055-1070 and 137-055-5110.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1100
Continuation of Services

(1) When a family's assistance grant is closed, support enforcement services will automatically be continued. The Division of Child Support (DCS) will notify the support obligee and any child attending school under ORS 107.108 and OAR 137-055-5110, in writing, of the services to be provided. DCS will notify the obligee, and the child attending school that subject to the obligor's right to request services:

(a) An obligee may at any time request that support enforcement services no longer be provided. If the obligee so requests and case closure procedures pursuant to OAR 137-055-1120 have been completed, all support enforcement services on behalf of the obligee will be discontinued. However, except as provided in section (2) of this rule, if an order has already been established, DCS will continue efforts to collect arrears assigned to the state. DCS will apply any collections received against the assigned arrears until this amount has been collected.

(b) An obligee may also request under section (2) of this rule that support enforcement services no longer be provided for either the obligee or the state.

(c) A child attending school may request that support enforcement services no longer be provided. If the child attending school so requests, all support enforcement services on behalf of the child attending school will be discontinued.

(2) If an obligee believes that physical or emotional harm to the family may result if support enforcement services are provided, the obligee may request that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will immediately suspend all activity on the case, add good cause case coding and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(a) If the obligee returns the completed and signed Good Cause portion of the Client Safety Packet on Good Cause, the administrator will proceed with case closure pursuant to OAR 137-055-1120(1)(i), and DCS will satisfy any and all permanently assigned arrears as defined in OAR 137-055-6020(7)(a) and (b).

(b) If the obligee returns the completed and signed Claim of Risk portion of the Client Safety Packet on Good Cause, the administrator will remove the good cause case coding and make a finding and order for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(c) If the obligee returns the completed and signed Address of Record portion of the Client Safety Packet on Good Cause, the administrator will remove the good cause case coding and update the child support case record appropriately.

(d) If the obligee does not send a reply to the Client Safety Packet on Good Cause within 30 days, the administrator will proceed with case closure pursuant to OAR 137-055-1120(1)(j), and DCS will satisfy any and all permanently assigned arrears as defined in OAR 137-055-6020(7)(a) and (b).

(e) If the obligee claims good cause, the child attending school may apply for services pursuant to OAR 137-055-1090 and 137-055-5110.

(3) If a case has been closed pursuant to this rule, an obligee or a child attending school may at any time request the child support case be reopened by completing a new application for services. If an application for services is received, arrears may be reestablished pursuant to OAR 137-055-3240, except for permanently assigned arrears which have been satisfied or which accrued to the state prior to the reapplication for services, except as provided in OAR 137-055-5120.

Stat. Auth.: ORS 25.080 & 180.345
Stats. Implemented: ORS 18.400, 25.020 & 25.080
Hist.: AFS 34-1986(Temp), f. & ef. 4-14-86; AFS 65-1986, f. & ef. 9-19-86; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0054; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0055; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1100; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1120
Case Closure

(1) The administrator may close a child support case, whenever the case meets at least one of the following criteria for case closure:

(a) There is no longer a current support order, and arrears are under $500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law;

(b) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(c) Paternity cannot be established because:

(A) A parentage test, or a court or administrative process, has excluded the putative father and no other putative father can be identified;

(B) In a case involving incest or forcible rape, or where legal proceedings for adoption are pending, the Department of Human Services (DHS) or the administrator has determined that it would not be in the best interests of the child to establish paternity; or

(C) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;

(D) Action to establish paternity has not been initiated and the child is at least 18 years old.

(d) The location of the non-custodial parent is unknown, and the state parent locator service has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the non-custodial parent:

(A) Over a three-year period when there is sufficient information to initiate an automated locate effort; or

(B) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

(e) When paternity is not at issue and the non-custodial parent cannot pay support for the duration of the child's minority because the parent is both:

(A) Institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; and

(B) Without available income or assets which could be levied or attached for support;

(f) The non-custodial parent:

(A) Is a citizen of, and lives in, a foreign country;

(B) Does not work for the Federal government or for a company or state with headquarters in or offices in the United States;

(C) Has no reachable income or assets in the United States; and

(D) Oregon has been unable to establish reciprocity with the country;

(g) The state parent locator service has provided location-only services based upon a request under 45 CFR 302.35(c)(3);

(h) The custodial parent or recipient of services requests closure, and:

(A) There is no assignment to the state of medical support; and

(B) There is no assignment of arrears that have accrued on the case;

(i) The custodial parent or recipient of services is deceased and no trustee or personal representative has requested services to collect arrears;

(j) DHS or the administrator pursuant to OAR 137-055-1100(2), has made a finding of good cause or other exceptions to cooperation and has determined that support enforcement may not proceed without risk or harm to the child or caretaker;

(k) In a non-TANF case (excluding a Medicaid case), the administrator is unable to contact the custodial parent, or recipient of services, within 60 calendar days, despite an attempt of at least one letter sent by first class mail to the last known address;

(l) In a non-TANF case, the administrator documents the circumstances of non-cooperation by the custodial parent, or recipient of services, and an action by the custodial parent, or applicant for services, is essential for the next step in providing enforcement services; or

(m) The administrator documents failure by the initiating state to take an action which is essential for the next step in providing services.

(2)(a)(A) Except as otherwise provided in this section, if the administrator elects to close a case pursuant to subsection (1)(a), (1)(e), (1)(f), (1)(i) or (1)(k) through (1)(m) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case.

(B) If the administrator elects to close a case pursuant to subsection (1)(b) through (1)(d) of this rule, the administrator:

(i) Will notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case;

(ii) Is not required to notify the obligor of the intent to close the case; and

(iii) If the provisions of paragraph (1)(c)(D) apply, is not required to notify any other party.

(C) If the administrator elects to close a case pursuant to subsection (1)(g) of this rule, the administrator is not required to notify any party of the intent to close the case.

(D) If the administrator elects to close a case pursuant to subsection (1)(h) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case, except:

(i) When the case is a Child Welfare or Oregon Youth Authority case in which the child has left state care, an order under OAR 137-055-3290 is not appropriate, and a notice and finding has not been initiated, the case will be closed immediately; and

(ii) No closure notice will be sent to the parties unless a party had contact with the Child Support Program, Child Welfare or the Oregon Youth Authority regarding the child support case.

(E) If the administrator elects to close a case pursuant to subsection (1)(j) of this rule, the administrator will:

(i) Notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case; and

(ii) Not notify the obligor of the intent to close the case.

(b) The 60-day time frame in paragraph (2)(a)(A) is independent of the 60-day calendar time frame in subsection (1)(k).

(c) The administrator will document the notice of case closure by entering a narrative line, or lines, on the child support computer system and will include the date of the notice.

(d) The content of the notice in paragraph (2)(a)(A) must include, but is not limited to, the specific reason for closure, actions a party can take to prevent closure, and a statement that an individual may reapply for services at any time.

(3) Notwithstanding paragraph (2)(a)(A) of this rule, a case may be closed immediately if:

(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or

(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.

(4) The administrator will keep a case open if, in response to the notice sent pursuant to paragraph (2)(a)(A) of this rule:

(a) The applicant or recipient of services:

(A) Supplies information which could lead to the establishment of paternity or of a support order, or enforcement of an order; or

(B) Reestablishes contact with the administrator, in cases where the administrator proposed to close the case under subsection (1)(k) of this rule; or

(b) The party who is not the applicant or recipient of services completes an application for services.

(5) A party may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order, or enforcement of an order, by completing a new application for services.

(6) The administrator will document the justification for case closure by entering a narrative line or lines on the child support computer system in sufficient detail to communicate the basis for the case closure.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.020 & 25.080

Hist.: AFS 35-1986(Temp), f. & ef. 4-14-86; AFS 66-1986, f. & ef. 9-19-86; AFS 27-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0055; AFS 15-1993, f. 8-13-93, cert. ef. 8-15-93; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0050; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1120; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1140
Confidentiality of Records in the Child Support Program

(1)(a) As used in this rule, “employee” means a person employed by the Department of Justice (DOJ) or a district attorney office that provides Child Support Program (CSP) services;

(b) “Party” has the meaning given in OAR 137-055-1020, or a party’s attorney.

(2) For purposes of this rule, and subject to the limitations set forth in section (3) of this rule, the contents of a case record include, but are not limited to:

(a) The names of the obligor, beneficiary and obligee or other payee;

(b) The addresses of the obligor, beneficiary and obligee or other payee;

(c) The address of record and address of service of the obligee, beneficiary or obligor;

(d) The name and address of the obligor’s employer;

(e) The social security numbers of the obligor, the obligee and beneficiaries;

(f) The record of all legal and collection actions taken on the case;

(g) The record of all accrual and billings, payments and distribution of payments;

(h) The narrative record; and

(i) The contents of any paper file maintained for purposes of establishment and/or enforcement of a child support order or for accounting purposes.

(3) Any data listed in section (2) of this rule or any other data that resides on the Child Support Enforcement Automated System (CSEAS) that is extracted from computer interfaces with other agencies’ computer systems is not considered to be child support information until or unless the data is used for child support purposes. Until such data is used for child support purposes it is not subject to any exceptions to confidentiality and it may not be released to any other person or agency in any circumstance, except as provided in ORS 25.260(5) and as may be provided in other agency rule.

(4) Child support case related records, files, papers and communications are confidential and may not be disclosed or used for purposes other than those directly connected to the administration of the CSP except:

(a) Information may be shared as provided in ORS 25.260(5), OAR 137-055-1320 and 137-055-1360 and as may be provided in other agency rule;

(b) Information may be shared for purposes of any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of:

(A) Title IV-D of the Social Security Act, child support programs in Oregon and other states;

(B) Title IV-A of the Social Security Act, Temporary Assistance to Needy Families; or

(C) Title XIX of the Social Security Act, Medicaid programs;

(c) Information may be shared as required by state or federal statute or rule;

(d)(A) Elected federal and state legislators and the Governor are considered to be within the chain of oversight of the CSP. Information about a child support case may be shared with these elected officials and their staff in response to issues brought by constituents who are parties to the case;

(B) County commissioners exercise a constituent representative function in county government for county administered programs. District attorney offices that operate child support programs may respond to constituent issues brought by county commissioners of the same county if the constituent is a party in a case administered by that office. District attorneys are DOJ sub-recipients. CSP Administration may also respond to constituent issues brought by county commissioners on district attorney administered child support cases where the constituent is a party;

(C) Information disclosed under paragraphs (A) and (B) of this subsection is subject to the restrictions in section (6) of this rule;

(e) When a party requires the use of an interpreter in communicating with the administrator, information given to such an interpreter is not a violation of any provision of this rule; and

(f) A person who is the executor of the estate or personal representative of a deceased party is entitled to receive any information that the deceased party would have been entitled to receive.

(5)(a) The CSP may release information to a private industry council as provided in 42 USC 654a(f)(5).

(b) The information released under subsection (a) of this section may be provided to a private industry council only for the purpose of identifying and contacting noncustodial parents regarding participation of the noncustodial parents in welfare-to-work grants under 42 USC 603(a)(5).

(c) For the purposes of this section, “private industry council” means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to Title I of the Workforce Investment Act (29 USC 2801, et seq.). “Private industry council” includes workforce centers and one-stop career centers.

(6)(a) Information from a case record may be disclosed to a party in that case outside a legal proceeding, except for the following personal information about the other party:

(A) The residence or mailing address of the other party if that other party is not the state;

(B) The social security number of the other party;

(C) The name, address and telephone number of the other party’s employers;

(D) The telephone number of the other party;

(E) Financial institution account information of the other party;

(F) The driver’s license number of the other party; and

(G) Any other information which may identify the location of the minor child or other party, such as day care provider’s name and address.

(b) Except for personal information described in subsection (a) of this section, information from a case record may be provided to a party via the CSP web page if appropriate personal identifiers, such as social security number, case number or date of birth are required to be provided in order to access such information.

(7) Notwithstanding the provisions of subsection (6)(a), an employee may disclose personal information described in paragraphs (6)(a)(A) through (6)(a)(G) to a party, if disclosure of the information is otherwise required by rule or statute.

(8) Any information from the case record, including any information derived from another agency, that was used for any calculations or determinations relevant to the legal action may be disclosed to a party. Where there is a finding of risk and order for nondisclosure of information pursuant to OAR 137-055-1160, all nondisclosable information must be redacted before documents are released.

(9) Requestors may be required to pay for the actual costs of staff time and materials to produce copies of case records before documents are released.

(10)(a) Information from case records may be disclosed to persons not a party to the child support case who are making contact with the CSP on behalf of a party, if the following conditions are met:

(A) The person who is not a party to the case provides the social security number of the party for whom they are making the inquiry or the child support case number;

(B) The person who is not a party to the case making the contact on behalf of the party is the current spouse or domestic partner of the party and residing with the party or a parent or legal guardian of the party; and

(C) The CSP determines that the person is making case inquiries on behalf of the party and disclosure of such information would normally be made to the party in reply to such an inquiry.

(b) Disclosure of information is limited to the specific inquiries made on behalf of the party and is subject to the restrictions in subsections (6)(a) and (b) of this rule.

(11) Except as provided in subsections (10)(a) and (b) of this rule, information from a case record may not be disclosed to a person who is not a party to the case unless:

(a) The party has granted written consent to release the information to the person; or

(b) The person has power of attorney for the party, the duration and scope of which authorizes release of information from a case record at the time that the person requests such information. The power of attorney remains in effect until a written request to withdraw the power of attorney is submitted by the party or by the person, unless otherwise noted on the power of attorney.

(12) A child support case account balance is derived from the child support judgment, which is public information, and from the record of payments, which is not. Therefore, the case balance is not public information, is confidential and may not be released to persons not a party except as otherwise provided in this rule.

(13) Information obtained from the Internal Revenue Service and/or the Oregon Department of Revenue is subject to confidentiality rules imposed by those agencies even if those rules are more restrictive than the standards set in this rule, and may not be released for purposes other than those specified by those agencies.

(14) Criminal record information obtained from the Law Enforcement Data System or any other law enforcement source may be used for child support purposes only and may not be disclosed to parties or any other person or agency outside of the CSP. Information about the prosecution of child support related crimes initiated by the administrator may be released to parties in the child support case.

(15) Employees with access to computer records or records of any other nature available to them as employees may not access such records that pertain to their own child support case or the child support case of any relative or other person with whom the employee has a personal friendship or business association. No employee may perform casework on their own child support case or the case of any relative or other person with whom the employee has a personal friendship or business association.

(16) When an employee receives information that gives reasonable cause to believe that a child has suffered abuse as defined in ORS 419B.005(1)(a) the employee must make a report to the Department of Human Services as the agency that provides child welfare services and, if appropriate, to a law enforcement agency if abuse is discovered while providing program services.

(17) Employees who are subject to the Disciplinary Rules of the Oregon Code of Professional Responsibility must comply with those rules regarding mandatory reporting of child abuse. To the extent that those rules mandate a stricter standard than required by this rule, the Disciplinary Rules also apply.

(18) If an employee discloses or uses the contents of any child support records, files, papers or communications in violation of this rule, the employee is subject to progressive discipline, up to and including dismissal from employment.

(19) To ensure knowledge of the requirements of this rule, employees with access to computer records, or records of any other nature available to them as employees, are required annually to:

(a) Review this rule and the CSP Director's automated tutorial on confidentiality;

(b) Complete with 100 percent success the CSP Director's automated examination on confidentiality; and

(c) Sign a certificate acknowledging confidentiality requirements. The certificate must be in the form prescribed by the CSP Director.

(20)(a) For DOJ employees, each signed certificate must be forwarded to DOJ Human Resources, with a copy kept in the employee's local office drop file;

(b) For district attorney employees, each signed certificate must be kept in accordance with county personnel practices.

(21) Notwithstanding any other provision of this rule, an employee may release a party's name and address to a local law enforcement agency when necessary to prevent a criminal act that is likely to result in death or substantial bodily harm.

Stat. Auth.: ORS 25.260 & 180.345
Stats. Implemented: ORS 25.260, 127.005 & 411.320
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1145
Access to Child Support Records

(1) When information may be shared pursuant to ORS 25.260, this rule clarifies the type of information which may be accessed through automation or contact and who is authorized to access the information.

(2)(a) Information which may be accessed from the Child Support Enforcement Automated System (CSEAS) records by an agency administering programs under Title IV-A of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is an address of record pursuant to OAR 137-055-1180;

(E) Obligor employer name, address, federal identification number and wages;

(F) Obligor unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name(s) of any state(s) with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) The date(s) and amount(s) of any support payment distributed and to whom or where it was distributed; and

(K) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and Child Support Program (CSP) employee roster.

(b) Information which may be accessed from CSEAS records by an agency administering programs under Title XIX of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is an address of record pursuant to OAR 137-055-1180;

(E) Obligor's employer name, address, federal identification number and wages;

(F) Obligor's unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name(s) of any state(s) with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) Whether health care coverage is ordered;

(K) Whether health care coverage is provided;

(L) Insurer name, address and health insurance policy number;

(M) The date(s) and amount(s) of any support payment made to the obligee; and

(N) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and CSP employee roster.

(c) Information which may be accessed from CSEAS records by an agency administering programs under Title I, X, XIV or XVI of the Social Security Act, an agency administering the Food Stamp program, the State Employment Services Agency (including agencies which administer the unemployment compensation program), and agencies administering workers' compensation programs is limited to obligor name, social security number and address and employer name, address and federal identification number.

(A) Notwithstanding the provisions of subsection (2)(c), if an agency identified in that subsection receives a written consent to release information as provided in OAR 137-055-1140(11), the agency may have access to information that may be released to a party.

(B) In addition to the information listed in subsection (2)(c), the State Employment Services Agency (including agencies which administer the unemployment compensation program) may have access to the history of the obligor's employers' names, addresses and federal identification numbers.

(d) Information which may be accessed from CSEAS records by a private industry council, as defined in OAR 137-055-1140, is limited to obligor name, address, phone number and Title IV-A case number.

(3) An agency administering a program identified in section (2) of this rule may obtain access for its employees to CSEAS records by entering into an interagency agreement with the Child Support Program (CSP). Any agreement must include provisions under which the agency seeking access agrees to put into place a process that ensures:

(a) Each employee given access has read and understands the CSP rules and Division of Child Support conflict of interest policy;

(b) Each employee given access agrees to abide by the terms of the CSP rules and policy;

(c) Each employee given access agrees to access and use information only for the purposes for which access is allowed as described in this rule;

(d) Employees can identify and be screened from conflict of interest cases;

(e) The agency, on a regular basis, audits access by employees, including verification of the purpose for which information is accessed and provides the CSP with the results of the audit;

(f) Violations are reported to the CSP, including the steps taken by the agency to prevent future violation;

(g) Access is revoked as provided in section (4) of this rule; and

(h) Access rights are updated, including notifying the CSP when an employee terminates or is transferred.

(4) If an employee of an agency described in section (2) of this rule discloses or inappropriately uses the information covered by this rule:

(a) The CSP Director, after consulting with the employee's agency, will determine whether the disclosure or usage occurred or likely occurred; and

(b) The employee's access to information from CSEAS records will be revoked:

(A) Temporarily, if a determination by the CSP Director is pending; or

(B) Permanently, if a determination by the CSP Director is made that disclosure or usage occurred or likely occurred.

(c) The provisions of this section are in addition to any other penalty for disclosure or usage of confidential information imposed by the employee's agency or by any other provision of law.

(5) CSP staff may disclose case information to an employee of an agency described in subsection (2)(a) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not the Internal Revenue Service.

(6) CSP staff may disclose information to an employee of an agency described in subsection (2)(b) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not:

(A) The Internal Revenue Service;

(B) The National Directory of New Hires; or

(C) The Federal Case Registry.

(7) Notwithstanding any other provision of this rule and subject to sections (3) and (4) of this rule, when an agency of the state is the obligee as defined in ORS 25.010, the agency may have access to information that may be released to an obligee under OAR 137-055-1140.

(8) Information for which disclosure is allowed under section (5) or (6) of this rule may be accessed from CSEAS records if feasible.

Stat. Auth.: ORS 25.260, 180.345 & 180.380
Stats. Implemented: ORS 25.260
Hist.: DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1160
Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) For the purposes of this rule the following definitions apply:

(a) "Claim of risk for nondisclosure of information" means a claim by a party to a paternity or support case made to the administrator, an administrative law judge or the court that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information;

(b) "Finding of risk and order for nondisclosure of information" means a finding by the administrator, an administrative law judge or the court, which may be made ex parte, that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information.

(2) A claim of risk for nondisclosure of information may be made to the administrator by a party at any time that a child support case is open. Forms for making a claim of risk for nondisclosure of information will be available from all child support offices and be made available to other community resources. At the initiation of any legal process that would result in a judgment or administrative order establishing paternity or including a provision concerning support, the administrator will provide parties an opportunity to make a claim of risk for nondisclosure of information.

(3) The administrator will make a finding of risk and order for nondisclosure of information when a party makes a written and signed claim of risk for nondisclosure of information pursuant to section(2) of this rule unless the party does not provide an address of record pursuant to section (5) of this rule.

(4) An administrative law judge will make a finding of risk and order for nondisclosure of information when a party makes a claim of risk for nondisclosure of information in a hearing unless the party does not provide an address of record pursuant to section (5) of this rule.

(5) A party who makes a claim of risk for nondisclosure of information must provide an address of record that is releasable to the other party(ies) in legal proceedings. The claim of risk for nondisclosure of information form provided to the party by the administrator must have a place in which to list an address of record. If a requesting party does not provide an address of record, a finding of risk and order for nondisclosure of information will not be made.

(6) When a finding of risk and order for nondisclosure of information has been made, the administrator must ensure that all pleadings, returns of service, orders or any other documents that would be sent to the parties or would be available as public information in a court file does not contain or must have deleted any of the identifying information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a). Any document sent to the court that contains any of the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) must be in a sealed envelope with a cover sheet informing the court of the confidential nature of the contents.

(7) A finding of risk and order for nondisclosure of information will be documented on the child support case file and will remain in force until such time as a party who requested a claim of risk retracts the claim in writing.

(8) A party who requested a claim of risk may retract the claim on a form provided by the administrator. When a signed retraction form is received by the administrator, the administrator will enter, or will ask the court to enter, a finding and order terminating the order for nondisclosure of information.

(9) Any information previously protected under an order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information is terminated. The retraction form provided by the administrator will advise the requestor that previously protected information may be released to the other party(ies).

(10) In cases where the administrator is not involved in the preparation of the support order or judgment establishing paternity, or when child support services under ORS 25.080 are not being provided, any claim of risk for nondisclosure of information pursuant to ORS 25.020 must be made to the court.

(11) Notwithstanding section (5) of this rule, where the court has made a finding of risk and order for nondisclosure of information and the case is receiving or subsequently receives child support services pursuant to ORS 25.080, the administrator will implement the court's finding pursuant to this rule. In such a case, if the party fails to provide an address of record within 30 days of a written request from the administrator, the administrator will use, in order of preference, the party's mailing, contact or residence address as the address of record. The written request from the administrator must advise the party that if no address of record is provided within 30 days, the administrator will use the party's mailing, contact or resident address as the address of record, and the new address of record may be released to the other party(ies).

Stat. Auth.: ORS 25.020 & 180.345
Stats. Implemented: ORS 25.020
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f.

2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1180
Confidentiality — Address of Record

(1) "Address of record" means an address provided by a party in a child support or paternity case to the administrator that may be an address other than the party's home address but is an address where the party can receive legal papers. The address of record may be released in writing to the other party(ies) during the pendency of a child support or paternity legal proceeding. The address of record will be used on all legal documents.

(2) A party may provide or amend an address of record to the administrator at any time the child support case is open.

(3) The Child Support Program will provide annual notice to parties that they may provide an address of record to the administrator at any time.

(4) The administrator will provide notice to parties of the opportunity to provide an address of record at the initiation of any legal action that requires the service of legal documents on a party or would cause the following to be shared with the other party as part of the legal action:

(a) Home, mailing or contact address;

(b) Social security number;

(c) Telephone number;

(d) Driver license number;

(e) Employer's name, address and telephone number.

(5) The administrator will maintain the address of record on the case record.

(6) If a party has provided an address of record and the address is more than six months old, the administrator will provide the party with notice and opportunity to update the address of record prior to initiating any legal action.

(7) An address of record may be any place that a party can receive mail but must be located within the same state as the party's home.

(8) An address of record will be documented on the case record and will remain in force until such time as a party retracts the address of record in writing.

(9) When a party provides an address of record during a hearing, a final order issued under OAR 137-003-0665 must include a notation of the address of record.

(10) Notwithstanding the provisions of section (8), when documents sent to a party's address of record are returned because the address of record is not valid, the administrator will use, in order of preference, the party's mailing, contact or residence address as the address of record. The administrator will notify the party that such address may be released to the other party(ies), and inform the party that a new address of record may be submitted.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.011, 25.020, 25.080 & 25.085
Hist.: AFS 23-1998, f. & cert. ef. 11-2-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0292; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1180; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-1600
Child Support Program Participant Grievance

(1) For the purposes of this rule the following definitions apply;

(a) "Program participant" means any obligor, obligee or beneficiary in an Oregon child support case or any person denied services after submitting an application.

(b) "Grievance" means a formal complaint filed against the administrator.

(c) "Grievant" means a program participant who has filed a grievance as set out in this rule.

(2) Program participants are entitled to fair, professional, courteous and accurate service. A grievance procedure has been established to enable program participants a means to formally express when they perceive that they have not received fair, professional, courteous or accurate service. This grievance procedure will be handled by the Division of Child Support (DCS) under the oversight of the Oregon Child Support Program (CSP) Director.

(3) Grievances may be filed by program participants or attorneys or other employees of law offices representing program participants.

(4) It is recognized that child support enforcement activities may create negative reactions among some program participants. It is further recognized that a high level of service may not result in desired support payments. Therefore, a grievance filed against the administrator must be investigated to determine if the grievance has merit. Grievances which will be considered to be without merit include:

(a) Grievances that protest actions that are prescribed or permitted by state administrative rule, state law, child support program approved written policy or procedure, federal law or federal regulation;

(b) Grievances that protest that support payments have not been made if the administrator has taken appropriate steps in accordance with state and federal rules to obtain payments;

(c) Grievances filed regarding actions taken by, or failure to take action by, another agency or a child support agency of another state;

(d) Grievances that protest that actions have not been taken but the case record reflects otherwise; or

(e) Grievances that do not constitute a complaint but merely convey information to, or request an action by the administrator.

(5) The decision to find the grievance to be without merit or send it to the appropriate office for resolution will be made by the CSP.

(6) Grievances may be made on a form developed by the CSP.

(7) Nothing in this rule precludes any program participant or any other person or entity from expressing complaints to the administrator by any other method.

(8) Grievance forms will be available to program participants through any CSP office. The address and telephone number where a grievance form can be obtained and information about the grievance process will be:

(a) Conspicuously posted in all CSP offices;

(b) Included in the standard application for support enforcement services;

(c) Included in initial letters sent to parties by the CSP;

(d) Included in the CSP's general information pamphlet;

(e) Included in or with an annual notice mailed to the parties.

(9) Grievants must file the completed grievance forms with the CSP constituent desk. Completed grievance forms or photocopies of these forms filed with the administrator will be immediately forwarded to the CSP's constituent desk. Upon receipt of the grievance, the CSP constituent desk will:

(a) Record receipt of the grievance;

(b) Investigate the grievance to determine if the grievance is without merit per section

(4) Of this rule;

(c) If the grievance is without merit per section (4) of this rule, the grievance will be returned to the grievant with an explanation about why it has been returned;

(d) If the grievance is not returned to the grievant it will be forwarded to the grievance coordinator(s) in the appropriate branch office for resolution.

(10) Upon receipt of the grievance, the office against whom the grievance has been filed will investigate the grievance. That office will either take corrective action and notify the grievant or contact the grievant to explain why corrective action is not appropriate. The CSP constituent desk will set time limits for the administrator to address the grievance, not to exceed 90 days from the date the grievance is received at DCS. The date received by the CSP constituent desk will be considered to be the date the grievance is screened and accepted.

(11) Upon completion of grievance processing the office against whom the grievance has been filed will send the grievance form to the CSP constituent desk with a report of the grievance investigation and the disposition.

(12) Grievances that allege serious violations of personnel rules or standards of personal conduct, such as, but not limited to, allegations of racial or sexual discrimination or sexual harassment, in which allegations are substantiated, will be removed from this grievance process and be part of the personnel process of the office against whom the grievance has been filed.

(13) A record of grievances and dispositions will be maintained by the CSP for a period of three years.

(14) The administrator against whom a grievance has been filed will not discriminate against the grievant because a grievance has been filed.

(15) Performance reviews will include examination of the administrator's compliance with these grievance procedures and an examination of grievances filed against the administrator and resolution to such grievances for the previous calendar year.

Stat. Auth.: ORS 25.243 & 180.345
Stats. Implemented: ORS 25.080 & 25.243
Hist.: AFS 1-1995, f. 1-3-95, cert. ef. 5-2-95; AFS 32-1995, f. & cert. ef. 11-8-95; AFS 20-1997, f. & cert. ef. 11-7-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0010; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1600; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1600; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-2045
Spousal Support

(1) For the purposes of this rule, the following applies:

(a) A "spousal support only" case is a case in which there is no current child support obligation or child support arrears; and

(b) "Public assistance" means food stamps, general assistance, medical assistance, old-age assistance, TANF, aid to the blind, aid to the permanently and totally disabled, and any other assistance granted by the Department of Human Services in accordance with state and federal laws.

(2) When an Oregon judgment or support order for spousal support only is received, the judgment does not include child support, the order seeks collection, accounting, distribution and enforcement services, and the obligee is receiving public assistance, the administrator will:

(a) Create a limited services case, as defined in OAR 137-055-1070, on the Child Support Enforcement Automated System (CSEAS) if one does not already exist;

(b) If applicable, add arrears under ORS 25.015 or establish arrears under ORS 25.167 or 416.429; and

(c) Initiate income withholding under ORS 25.372 to 25.427.

(3) When an Oregon judgment for spousal support is received, does not include child support, seeks collection, accounting, distribution and enforcement services, and it is unknown whether the obligee is receiving public assistance, the administrator will:

(a) Create an information only case on the CSEAS; and

(b) Send the obligee an application for spousal support services or authorization to access assistance records, explaining that spousal support services may not be provided until assistance records can be checked and verified.

(4) New spousal support only cases in which the obligee is receiving assistance will be assigned to the appropriate DCS office for provision of services required by ORS 25.381.

(5) Notwithstanding any other provisions of this rule, each county district attorney may elect to provide services in spousal support only cases, subject to the following:

(a) Written criteria must be established to determine under what circumstances services will be provided and to identify what services will be provided;

(b) The written criteria established in subsection (5)(a) must be posted in a public place; and

(c) Claims for time spent providing services on spousal support only cases and any other expenses may not be submitted with claims for federal financial participation.

(6) When services are being provided under section (5) of this rule, accounting and distribution services will be provided by the Department of Justice.

(7) The administrator will close a spousal support only case and notify the parties if:

(a) The obligee is not on any form of public assistance;

(b) There is no known employer for the obligor and no income withholding in place;

(c) A payment has not been received within the last six months; and

(d) Services are not being provided under section (5) of this rule.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.381
Hist.: DOJ 1-2006, f & cert. ef. 1-3-06

137-055-2060
Cases with Contradictory Purposes

(1) Cases with contradictory purposes are defined as two or more child support cases in which the same person is, or has been, both an obligee and obligor in those cases and the cases are, or have been, assigned to the same Child Support Program (CSP) office.

(2) The administrator represents the interests of the state. There is no conflict of interest when the same CSP office is assigned cases where the same person is, or has been, both an obligor and an obligee. The administrator is responsible for impartial application of the law. Nothing in this rule precludes a CSP office from having cases assigned to them in which the same person is, or has been, both an obligor and obligee.

(3) It is recognized that a person receiving child support services or a person eligible to receive child support services may be reluctant to pursue those services because the CSP office through which they do or would receive services is, or has been, the same CSP office in another case where the person is, or has been, the opposite party.

(4) A person who has cases in which that person is, or has been, or upon application would be, both an obligor and obligee with cases assigned to the same CSP office may ask the CSP office manager to transfer one of the cases to a different CSP office. The CSP office manager will consider the request and either grant the transfer or explain to the requestor why the transfer is not granted.

(5) If a case is transferred, the assignment to a different CSP office will take into consideration the needs of the requestor and the other party(ies).

(6) If the CSP office manager denies the request for transfer, the requestor may ask the CSP Director to review the decision of the administrator and to facilitate a resolution.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 25.080
Hist.: AFS 6-1995, f. 2-17-95, cert. ef. 3-1-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0042; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2060; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-2140
Delegations to Administrative Law Judge

Administrative law judges of the Office of Administrative Hearings are authorized to do the following:

(1) Issue final orders without first issuing proposed orders.

(2) Issue final orders by default in cases described in OAR 137-003-0670, except in a case authorized by ORS 416.415 or as authorized in section (3). An administrative law judge is authorized to issue a final order by default in a case authorized by ORS 416.425(5) but not in any other case authorized by ORS 416.425.

(3) Issue final orders by default when the nonrequesting party(ies) fails to appear for a hearing conducted under ORS 25.020(13), or issue a dismissal with prejudice when the requesting party fails to appear for a hearing conducted under ORS 25.020(13).

(4) Determine whether a reschedule request should be granted pursuant to OAR 137-003-0670(2), based on whether the requester's failure to appear for a scheduled hearing was beyond the reasonable control of the party.

(5) Issue final orders granting or denying late hearing requests pursuant to OAR 137-003-0528.

(6) Provide to each party the information required to be given under ORS 183.413(2) or OAR 137-003-0510(1).

(7) Order and control discovery.

Stat. Auth.: ORS 25.020, 180.345
Stats. Implemented: ORS, 25.020, 180.345, 416.415, 416.425
Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0801; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2140; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3220
Establishment of Past Support Orders

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the non-custodial parent to the custodial parent or other custodial adult for purposes of support of the child(ren).

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in OAR 137-050-0320 through 137-050-0490.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When a non-custodial parent has made payments in cash or in kind to a custodial parent or other custodial adult for the support of the child(ren) during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support will be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment will be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The non-custodial parent must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the custodial parent or other custodial adult;

(f) Any other record of payment deemed acceptable by the administrator.

(6) It will be within the discretion of the administrator to determine whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees with this determination, the support determination may be appealed to an administrative law judge per ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

(a) October 1, 1995; or

(b) The date of the initiation of IV-D services from any state by application for services; or in case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another state, the date of application for services will be considered to be either:

(a) The date the initiating state requests past support to begin but not before October 1, 1995; or

(b) If the initiating state requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or

(c) If the initiating state does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) Where CSP services did not produce a support order and CSP services were terminated by the applicant or by the CSP agency per state and federal regulations and subsequently CSP services were initiated again, the administrator will not establish past support prior to the date of the most recent initiation of CSP services. If an initiating state requests that past support be established for two or more periods of time, past support will be established only for the most recent period.

(10) If there is or was a child support judgment in existence in any state for the non-custodial parent to pay support to the obligee for the same child(ren), no order for past support will be entered for a period of time before entry of the child support judgment already or previously existing except as provided in OAR 137-055-3200.

(11) Where the order to be entered is for past support only and does not include current support and the past support would be owed only to the State of Oregon or another state, the administrator will not enter an order for past support for a period of less than four months.

(12) Past support will be calculated per the Oregon Child Support Guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 416.422
Hist.: AFS 28-1995, f. 11-2-95, cert. ef. 11-3-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1010; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3240
Establishment of Arrears on Oregon Order Support Cases

(1) The administrator will establish arrears on support cases when the following conditions have been met:

(a) There has been an application for support enforcement services from a party in the case or there has been a mandatory referral for support enforcement services by an order of the court or because TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services have been provided to the family;

(b) There is an Oregon support order or an order from another state has been registered in Oregon;

(c) The administrator has determined that there is a need to establish the arrears balance on the case because:

(A) The administrator has no record or an incomplete accounting case record;

(B) An establishment of income withholding has been requested by an obligor or obligee pursuant to ORS 25.381; or

(C) There is a reason which necessitates that the arrears on the case record be reestablished; and

(D) There has been a request for arrears establishment by a party.

(2) A party requesting establishment or reestablishment of arrears must furnish an accounting that shows the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrears.

(3) Where arrears had earlier been established, through a process which afforded notice and an opportunity to contest to the parties, the arrears from that period will not be reestablished except that if interest had not been included in the establishment, interest may be added for that period.

(4) The enforcing agency may establish or reestablish arrears by either:

(a) Use of the judicial process authorized under ORS 25.167; or

(b) Use of the administrative process authorized under ORS 416.429.

(5) Notwithstanding section (4) of this rule, if the arrears to be established are for spousal support arrears or for both child and spousal support arrears, the administrator will use the process in ORS 25.167.

(6) Upon completion of the arrears establishment process in subsection (4)(a) or subsection (4)(b) of this rule, the case record will be adjusted to reflect the new arrears amount.

(7) Notwithstanding any other provision of this rule, arrears may be established when:

(a) There is an Oregon court order and less than 180 days have elapsed since the date the order was entered; and

(b) Notice has been sent to the parties that the Child Support Program will enter arrears established in the order and arrears for the period from the effective date of the order to the date of the notice if no party requests, within the 60-day period following the date of the notice, that the arrears be established under the process found in ORS 25.167 and 416.429.

(8) If no party, under section (7) of this rule, responds within 60 days of the notice to request arrears be established under the process found in ORS 25.167 and 416.429, the amount of the arrears under section (7) of this rule will be the amount of arrears added to the case record.

(9) Arrears for a child attending school as defined in OAR 137-055-5110, will be as set forth in OAR 137-055-5120.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.015
Hist.: AFS 5-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0047; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3280
Administrative Law Judge Order Regarding Arrears

(1) If a party objects to the enforcement of an order under ORS 416.429 on the basis that the amount of the arrears are incorrect, an administrative law judge may determine the correct amount of the arrears, if any, and issue an order enforcing both the newly determined arrears and the current support obligation.

(2) The amount of arrears as stated on the Notice of Intent to Enforce an Order issued under ORS 416.429 will be presumed to accurately state the arrears. The presumption may be rebutted by evidence of errors in calculation, by a showing that payments were made for which credits were not appropriately recorded, or any other evidence which demonstrates that the arrears amount sought is incorrect.

(3) An administrative law judge may enter an order providing for the enforcement of current support only, pending further proceedings to determine the correct amount of arrears.

Stat. Auth.: ORS 416.455 & Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 416.429
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-988; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1060; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3280; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3280; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3400
District Attorney Case Assignment for Modification or Suspension of Support

(1)(a) The purpose of this rule is to provide criteria for determining which Oregon District Attorney will have responsibility for initiating action to review and modify an Oregon judgment, or administrative order, that requires payment of child support. This rule applies only when both of the following conditions exist:

(A) An Oregon District Attorney has responsibility for providing support enforcement services under ORS 25.080; and

(B) Either of the following is true:

(i) A party to the case has requested a review and modification, as provided in OAR 137-055-3420, for purposes of changing the amount of the monthly support obligation; or

(ii) The obligor is presumed entitled to a suspension of the support obligation as a recipient of certain cash assistance, as provided in ORS 25.245.

(b) This rule does not apply to a Division of Child Support (DCS) office that is performing district attorney functions.

(2) For purposes of this rule, the following definitions apply:

(a) “Requesting party” means the party requesting the district attorney to review and modify the support obligation;

(A) The requesting party may be the obligor, the obligee, or the child attending school;

(B) An obligor deemed presumptively eligible for a suspension under ORS 25.245 will be considered the “requesting party”;

(b) "Non-requesting party" means any party that is not the party as defined in subsection (2)(a), above.

(3) In any case where there are arrears, the district attorney responsible under OAR 137-055-2040 for enforcing the case will, if the support order is in another Oregon county, transfer in the order for review and modification under ORS 25.100.

(4) In any case where there are no arrears:

(a) If all the parties reside in the same Oregon county, but the support order is in another county:

(A) The district attorney for the county of residence of the parties will be responsible for review and modification action;

(B) The district attorney for the county of residence may transfer in the support order for review and modification under ORS 25.100, as the county of residence for the non-requesting party.

(b) If any of the parties reside in the same Oregon county that is the county of the support order, the district attorney for that county will be responsible for review and modification action;

(c) If the support order, the requesting party, and the non-requesting party(ies) are all in different counties:

(A) If the district attorney for the county of the requesting party has previously transferred the support order to the requesting party's county for enforcement, the district attorney for the enforcing county will be responsible for review and modification action;

(B) If the case is not currently open as an enforcement case under ORS 25.080, or if the district attorney for the requesting party's county has never transferred the support order for enforcement:

(i) That district attorney will refer the requesting party to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(C) If the case is currently open as an enforcement case under ORS 25.080:

(i) The district attorney for the enforcing county will transfer the enforcement case to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(iii) Once the review and modification is completed, the district attorney for the county of the support order will transfer the enforcement case back to the proper enforcement county under OAR 137-055-2040.

(5) If the requesting party does not reside in Oregon, and regardless of whether the case has arrears or not:

(a) If the requesting party's case is already being enforced, the administrator will advise the requesting party to direct the request to the child support program in that other state. The other state's child support program may then ask the administrator to pursue action under appropriate state and federal statutes;

(b) If the requesting party's support case is not being enforced under the child support program in another state, the administrator will handle the request under sections (3) and (4) of this rule.

(6) If the non-requesting party(ies) does not reside in Oregon, the district attorney will handle the request under sections (3) and (4) of this rule.

(7) The matrix set out in **Table 1**, is included in this rule as an aid, and incorporates preceding sections of this rule: [Table not included. See ED. NOTE.]

(8) Notwithstanding subsection (1)(b), all functions and responsibilities assigned to Oregon District Attorneys under this rule will also be considered assigned to DCS, for those counties where DCS has assumed responsibility from the district attorney for providing support enforcement services.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080, 25.287
Hist.: AFS 33-1992, f. 11-17-92, cert. ef. 12-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0074; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3400; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3420
Periodic Review and Modification of Child Support Order Amounts

(1) For the purposes of this rule, the following definitions apply:

(a) "Determination" means an order resulting from a periodic review which finds that the current order of support is in "substantial compliance" with the Oregon guidelines.

(b) "Guidelines" means the guidelines, the formula, and related provisions in OAR 137-050-0320 through 137-050-0490.

(c) "Periodic Review" means proceedings initiated under ORS 25.287.

(d) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support amount; and

(B) The need to provide in the order for the child's health care needs through health care coverage or other means, not to include Medicaid, regardless of whether an adjustment in the amount of child support is necessary.

(e) "Substantial compliance" means that the current support order is within at least 15 percent or $50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines. When making this determination, the 15 percent or $50 formula will be applied to the currently ordered support amount.

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program will annually notify the parties of their right to request a periodic review of the amount of support ordered.

(3) The purpose of a periodic review is to determine, based on information from the parties and other sources as appropriate, whether the current child support order should be modified to assure substantial compliance with Oregon's child support guidelines, or to order health care coverage for the child(ren).

(4) The administrator may initiate a periodic review if a written request for periodic review is received from any party and 24 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted.

(5) The administrator must complete the determination that the order is in substantial compliance with the guidelines or complete the modification of the existing order within 180 days of receiving a written request for a periodic review, or locating the non-requesting party(ies), if necessary, whichever occurs later.

(6) The administrator is responsible for conducting a periodic review in this state or for requesting that another state conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the state reviewing the order applies in determining if a basis for modification exists.

(7) Upon receipt of a written request for a periodic review, the administrator will notify the non-requesting party(ies) of the review in writing and provide a copy of the notice to the requesting party. The notice must advise the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party(ies) if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days has passed since the date of the notice unless documentation or written information is received from the parties before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(8) The administrator will notify the parties in writing of the presumed correct support amount under the child support guidelines. This notification:

(a) May be by service of a proposed determination that the existing order is in substantial compliance with the guidelines, or

(b) May be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(c) Must advise the parties that each party has 30 days from the date of service of the notice to object to the determination or proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has passed;

(d) Must include the request for hearing form for each of the parties if the administrator uses an administrative determination or motion form; and

(e) Must be sent to an adult child who has requested notification of any modification proceeding pursuant to ORS 107.108

(9) If a party wishes to object to the proposed determination or modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(10) Upon receipt of a written request for hearing opposing the proposed determination or modification, the administrator will:

(a) Review the case to determine whether the support should be recalculated and, if so, notify the parties of the new presumed amount;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved.

(d) If a party is objecting to a proposed determination, send a copy of the proposed determination and hearing request to an adult child who has requested notification of any modification proceeding pursuant to ORS 107.108

(11) If no request for hearing is filed within the 30 day period, the administrator will submit the determination or modification of the support order to the circuit court for entry in the court register.

(12) If a hearing is held on a determination and the administrative law judge makes a finding that the order is not in substantial compliance with the guidelines, the administrative law judge must enter a modified order with the support amount that complies with the guidelines.

(13) An appeal under this rule will be as provided in ORS 25.287.

(14) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

Stat. Auth.: ORS 416.455 & 180.345
Stats. Implemented: ORS 25.080, 25.287, 107.135 & 416.425
Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3430
Substantial Change in Circumstance Review and Modification of Child Support Order Amounts

(1) For purposes of this rule the definitions provided in OAR 137-055-3420 apply.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstances.

(3) The administrator will conduct a review based upon a request for a change of circumstances modification only when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator receives a written request for modification based upon a change of circumstances and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I); and

(c) At least one of the following criteria are met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed;

(H) There is a need to provide health care coverage for the child(ren);

(I) A change in the physical custody of the child(ren) has taken place;

(J) An order is being modified to include a subsequent child of the parties; or

(K) A child no longer qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110 and the order is being modified pursuant to ORS 107.108(10) as a tiered order.

(d) And the requesting party (if other than the administrator):

(A) Completes a written request for modification based upon a substantial change of circumstances;

(B) Pursuant to ORS 416.425(6), provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstances has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit.

(4) Upon receipt of a written request for a review and modification, or upon the administrator's own initiative, the administrator will notify the non-requesting party(ies) of the review in writing and provide a copy of the notice to the requesting party (if any). The notice will inform the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days have passed since the date of the notice unless documentation or written information is received from all parties before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(5) A request for review will be granted unless:

(a) The conditions in section (3) have not been met; or

(b) The review was requested due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G), and the order is in substantial compliance with the guidelines. The determination of substantial compliance will be made as outlined in OAR 137-055-3420(1)(e).

(6) If the request for review is granted, the administrator will:

(a) Initiate a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(b) Advise the parties in writing of the presumed correct support amount under the child support guidelines. This notification:

(A) Must be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(B) Must advise the parties that each party has 30 days from the date of service of the notice to object to the proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(C) Must include the request for hearing form for each of the parties as provided in OAR 137-055-2160, if the administrator uses an administrative motion form.

(c) Send a copy to the adult child who has requested notification of any modification proceeding pursuant to ORS 107.108.

(7) If a party wishes to object to the proposed modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(8) Upon receipt of a written request for hearing opposing the proposed modification, the administrator will:

(a) Review the case to determine whether the support should be recalculated and, if so, notify the parties of the new presumed amount;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved.

(9) If a party submits, in writing, newly acquired information after a proposed modification has been served, the administrator will review the case pursuant to subsection (8)(a).

(10) If no request for hearing is filed within the 30 day period, the administrator will submit the modification of the support order to the circuit court for entry in the court register.

(11) If the request for review is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet which has been prescribed for this purpose.

(12) An appeal under this rule will be as provided in ORS 416.427.

(13) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(14) If a request for review and modification is received because a change in the physical custody of the child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 416.455 & 180.345
Stats. Implemented: ORS 25.080, 25.287, 107.135 & 416.425
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3440
Effective Date of Modification Under ORS 416.425

(1) In any proceeding to modify a support order under ORS 416.425, the modification may be effective on or at any time after the last nonrequesting party is served with a motion to set aside, alter or modify the judgment.

(2) If a motion to set aside, alter or modify a judgment is served on more than one nonrequesting party, the modification may be effective on or at any time after the last nonrequesting party is served.

(3)(a) For purposes of this rule a nonrequesting party is an individual obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, or an obligor under the child support order.

(b) An adult child, as defined in OAR 137-055-5110, who has sent a written request to the administrator to be a party to the modification is not a nonrequesting party for purposes of determining the effective date of a modification.

(4) If an amended motion is initiated and served on the parties, the effective date may be the date the original motion was served on the last nonrequesting party.

(5) This rule applies to any modification finalized after January 5, 2004.

Stat. Auth.: ORS 107.135, 180.345 & 416.455
Stats. Implemented: ORS 416.425
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1080; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3440; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3440; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3480
Modification of a Support Order to Zero

(1) The administrator may, upon its own initiative, or upon the request of a party, initiate the necessary action to modify a child support obligation to zero when one of the conditions listed in subsections (a), (b), (c), and (d) of this section apply;

(a) The child or children for whose benefit the support was ordered no longer are in the physical custody of the obligee. This subsection does not apply when the child is a child attending school or an adult child under ORS 107.108 and OAR 137-055-5110.

(b) The family is reconciled (that is, the obligor, obligee and child or children live together as an intact family).

(c) The obligee or beneficiary of the obligee is not receiving TANF cash assistance, foster care or Oregon Youth Authority services and has requested that the administrator modify the support obligation to zero.

(d) The child for whom support is ordered will be added to an existing order for a different child of the same parties.

(2) No order modifying a support obligation to zero shall be taken ex parte.

(3) Nothing in this rule prohibits the suspension of support accrual under any order for the reason that the obligor receives certain cash assistance as provided in ORS 25.245.

Stat. Auth.: ORS 180.345 & 416.455
Stats. Implemented: ORS 25.287 & 416.425
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1070; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3480; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3480; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3490
Suspension of Enforcement

(1) For purposes of this rule, "credit balance" means that payments received on a support account exceed all amounts owed by the obligor for ongoing and past-due support.

(2) When a motion has been filed to terminate, vacate, or set aside a support order or when a motion has been filed to modify a support order because of a change in physical custody of the child, the administrator may suspend enforcement of the support order if:

(a) Collection of support would result in the support account accruing a credit balance if the motion were granted; and

(b) The obligee and any child attending school under ORS 107.108 and OAR 137-055-5110, do not object to suspending enforcement of the support order.

(3) When enforcement is to be suspended under this section, the administrator will send written notice of the proposed suspension to the obligee and the child attending school, and will send a copy of the notice to the obligor;

(4) The notice will advise the obligee and the child attending school, that the obligee, and the child attending school, have 14 days from the date the notice is sent to object in writing to the proposed suspension of enforcement and to give the reason(s) for the objection.

(a) If the suspension is due to a motion to terminate, vacate or set aside a support order, the obligee and the child attending school, may object only on the basis that a credit balance would not result if the motion were granted.

(b) If the suspension is due to a motion to modify the support order because of a change in physical custody, the obligee or child attending school, may object only on the basis that:

(A) The child(ren) is/are not in the physical custody of the obligor;

(B) The child(ren) is/are in the custody of the obligor without the consent of the obligee or without a court order for legal custody; or

(C) A credit balance would not result if the motion were granted.

(D) When an obligee or child attending school, files a written objection under this subsection, the administrator will not suspend enforcement. However, if the obligee or child attending school's written objection results in the obligor accruing a credit balance, the provisions of OAR 137-055-6260 will apply. In addition, the obligee or child attending school, may incur an overpayment under OAR 137-055-6220;

(5) The obligee or child attending school may appeal the administrator's decision to suspend enforcement of the support order under ORS 183.484.

Stat. Auth.: ORS 25.125 & 180.345
Stats. Implemented: ORS 25.125
Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0069; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3490; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3490; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3640
Enforcement of a Subpoena by License Suspension

(1) For the purposes of this rule the following definitions apply:

(a) "License" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driving privileges granted by the Department of Transportation under ORS chapter 807 which includes all driving licenses and permits, and all hunting and fishing licenses and tags issued by the Oregon Department of Fish and Wildlife;

(b) "Administrative review" means a review of the obligor's objection to proposed action under this rule performed by the administrator to determine that:

(A) There is not a mistake in identity of the party;

(B) The party has not complied with the subpoena; or

(C) The subpoena was properly served upon the party.

(2) At the discretion of the administrator, the administrator may use the remedy set out in this rule or any other remedy allowable under Oregon law to enforce compliance with a subpoena issued pursuant to OAR 137-055-3620.

(3) When a party to a child support or paternity case has been served with a subpoena pursuant to OAR 137-055-3620 and the time for compliance set out on the subpoena has expired and the subpoenaed party has not complied with the subpoena, the administrator may serve notice to the party that a license or licenses issued to that party will be suspended.

(4) The notice of license suspension will contain:

(a) The license(s) subject to suspension;

(b) The name of the person whose license is subject to suspension, the child support case number, the social security number, if available, and date of birth, if known;

(c) The date the original subpoena had been served, the deadline the subpoena set for compliance and the documents or information that had been subpoenaed;

(d) The procedure for contesting license suspension and the bases for contesting the suspension. The only bases for contesting the suspension are:

(A) There is a mistake in identity of the party;

(B) The party has complied with the subpoena; or

(C) The subpoena was not properly served upon the party pursuant to OAR 137-055-3620.

(e) A statement that the party has 30 days to contest suspension in writing by requesting an administrative review on a form provided by the administrator;

(f) A statement that if the party provides the information or documents that were originally specified in the subpoena within 30 days of the date of the notice, the license(s) will not be suspended; and

(g) A statement that failure to contact the administrator within 30 days of the date of the notice to either request an administrative review to contest the suspension or to provide the originally subpoenaed information or documents will result in suspension of the license(s).

(5) If the party contests the suspension of the license(s), the administrator will conduct an administrative review to determine if the suspension should occur:

(6) If the administrator determines that the suspension of the license should occur, all parties will receive written notice of such determination. The notice will include the following:

(a) The basis for the determination;

(b) The right to appeal the determination and a form on which to make the appeal;

(c) The time limit for making an appeal is 14 days from the date of the notice;

(d) That if no appeal of the suspension is received within 14 days, the licensing agency will be notified to suspend the license immediately.

(7) An appeal of the determination in subsection (5) of this rule will be to an administrative law judge and the suspension of the license is stayed pending the decision of the administrative law judge. The only bases for the appeal are:

(a) There is a mistake in identity of the party;

(b) The party has complied with the subpoena; or

(c) The subpoena was not properly served upon the party pursuant to OAR 137-055-3620.

(8) If the party fails to provide the subpoenaed information or documents or fails to appeal the determination within the time period allowed, or if the administrative law judge affirms the administrative determination, the administrator will send a notice to the issuing agency to suspend the license. A copy of this order will be sent to all parties by regular mail.

(9) The notice to the issuing agency to suspend the license will contain the following:

(a) A statement that a child support or paternity case record is being maintained by the Child Support Program and that the license holder is a party in that case; and

(b) A statement that the holder of the license has failed to comply with a subpoena pursuant to OAR 137-055-3620.

(10) At any time after suspension of the license, the party may request that the administrator conduct a review to determine if the basis for the license suspension continues to exist. The administrator will review the suspension and notify the issuing agency to reinstate the license, when any of the following conditions are met:

(a) The party has furnished the originally subpoenaed information or documents;

(b) The legal action, enforcement action or other case action has been completed and there is no longer a need for the originally subpoenaed information or documents; or

(c) There is no longer a Child Support Program case.

Stat. Auth.: ORS 25.082, 25.750 & Sec. 2, Ch. 73 OL 2003
Stats. Implemented: ORS 25.082 & 25.750
Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0077; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3640; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3640; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-3660
Multiple Child Support Judgments

(1) When the administrator finds that two or more child support judgments exist involving the same obligor and child for the same time period and each judgment was issued in this state, the administrator may:

(a) Issue a proposed governing child support order, as defined in ORS 25.010;

(b) Petition the court in the county where a child who is subject to the judgment resides for a governing child support judgment; or

(c) Move to set aside any one of the support judgments if the judgment was entered in error.

(2) For purposes of a governing child support proceeding, there is a presumption that the terms of the last-issued child support judgment are the controlling terms and supersede contrary terms of each earlier-issued child support judgment, except that:

(a) When the last-issued child support judgment is silent about monetary support for the benefit of the child, the monetary support terms of an earlier-issued child support judgment continue; and

(b) When the last-issued child support judgment is silent about health care coverage for the benefit of the child, the health care coverage terms of an earlier-issued child support judgment continue.

(3) The presumption may be rebutted if the last issued child support judgment:

(a) Should be set aside under the provisions of ORCP 71;

(b) Was issued without prior notice to the issuing court, administrative law judge or administrator that another support proceeding involving the child was pending or another support judgment involving the child already existed;

(c) Was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment; or

(d) Was issued without service on the administrator as required in ORS 107.087, 107.135, 107.431, 108.110, 109.103 and 109.125, when support rights are assigned to the state and the state's interests were not adequately protected.

(4) The administrator may issue a proposed governing child support order as provided in subsection (1)(a), only if the presumption in section (2) is applied.

(5) When determining which support judgment was the "last-issued" for purposes of determining a governing child support judgment, the issue date for any support judgment will be:

(a) The date the support judgment was entered into the circuit court register; or

(b) If the support judgment is an administrative modification of a court judgment the date the order approving the modification was entered into the circuit court register.

(6) When the court issues a governing child support judgment or when an administrative governing child support order is approved by the court, the noncontrolling terms of each earlier child support judgment regarding monetary support or health care coverage are terminated. However, the issuance of the governing child support judgment does not affect any support payment arrearage or any liability related to health care coverage that has accrued under a child support judgment before the governing child support judgment is issued.

(7) A proposed governing child support order or petition for governing child support judgment will include:

(a) A reconciliation of any monetary support arrears or credits for overpayments under all of the child support judgments; or

(b) An order or motion to reconcile any monetary support arrears or credits for overpayments under all of the child support judgments in a separate proceeding under ORS 25.167 or 416.429.

(8) When reconciling any monetary support arrears or credits for overpayments under all of the child support judgments included in the governing child support proceeding for time periods prior to entry of a governing child support judgment:

(a) The obligor is expected to pay the total amount of current support due under the highest judgment; and

(b) Payment made toward any one of the judgments must be credited against the obligation owed under the others.

(9) This rule does not apply if the later-issued child support judgment was entered in circuit court before January 1, 2004, the administrator was providing services under ORS 25.080, and the administrator treated a later-in-time court judgment as superseding an earlier entered administrative order.

(10) For purposes of this rule, "Support Judgment" means an administrative order for child support that has been entered into the circuit court register under ORS 416.440 or a judgment of the court for child support.

Stat. Auth.: OL 2003, Ch. 146, §5
Stats. Implemented: ORS 25.164, 25.167 & 416.422
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4060
Income Withholding — General Provisions, Requirements and Definitions

(1) OARs 137-055-4060 through 137-055-4180 provide for collection of support by means of income withholding, in accordance with ORS 25.372 through ORS 25.427 and all other applicable Oregon law, on all support cases being enforced by the administrator.

(2) For purposes of OARs 137-055-4060 through 137-055-4180 and as used in ORS 25.372 through 25.427, the following definitions apply:

(a) "Alternative payment method" means the methods of paying support that are described in OAR 137-055-4120;

(b) "Best interests of the child" means the method of payment likely to produce consistent support which will reach the child(ren) in the most expedited manner.

(c) "Disposable income" means the part of an individual's income that remains after the deduction of any amounts required to be withheld by law, except as provided in subsections (B) or (C) of this section.

(A) Amounts required to be withheld by law includes, but is not limited to, required withholding for taxes and social security;

(B) Any amounts withheld for the following will not be deducted from the obligor's income when computing disposable income, even if such withholding is required by law or by judicial or administrative order:

(i) Health insurance premiums;

(ii) Spousal or child support.

(C) An obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income withheld. The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and DCS will not refund to the obligor, on the basis of such claims, any amounts withheld that DCS has already disbursed to the obligee or to any child attending school under ORS 107.108 and OAR 137-055-5110;

(d) "Good cause" for not withholding means a situation that exists when:

(A) A court or the administrator makes a written determination that, and a written explanation in the official record of why, immediate income withholding would not be in the best interests of the child; and

(B) If the case involves the modification of an existing support order, there is proof of timely payment of previously-ordered support and there are no arrears. Timely payment is indicated when the obligor has not previously become subject to initiated income withholding under the existing order.

(e) "Periodic recurring income" as used in calculating withholding from a lump sum payment or benefit pursuant to ORS 25.414(4), means income that is received at least monthly on a regular basis.

(3) All support orders issued or modified by the administrator will include a provision requiring the obligor to keep the administrator informed of:

(a) The name and address of the obligor's current employer;

(b) Whether or not the obligor has access to health insurance coverage at reasonable cost, and if so, the health insurance policy information.

Stat. Auth.: ORS 25.396; 25.427, 180.345
Stats. Implemented: ORS 25.372 - 25.427, 656.234, 657.780 & 657.855
Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 12-1994, f. 6-28-94, cert. ef. 7-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0175; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4060;DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4080
Immediate Income Withholding

(1) When the obligor is subject to a support order entered, modified, or registered in Oregon on or after October 1, 1989, the income of the obligor will be subject to immediate income withholding on the effective date of the order, regardless of whether support payments by the parent are in arrears, except that such income will not be subject to withholding in any case where:

(a) A court or the administrator makes a written finding and explanation that there is good cause not to require the withholding;

(A) A good cause finding must include a finding that immediate income withholding would not be in the best interests of the child; and

(B) There is proof of timely payments.

(b) The parties agree in writing to an alternative payment method as provided in OAR 137-055-4120; or

(c) Child support is accruing while the child is in the custody of the Department of Human Services or the Oregon Youth Authority as provided in ORS 416.417 and the obligor has requested an alternative payment method in writing.

(2) An exception to immediate withholding under section (1) above may only be granted if:

(a) No arrears are owed on the case;

(b) The obligor has complied with the terms of any previously allowed exception to withholding; and

(c) When money is owed to the state under the support order, the state agrees in writing to the alternative payment method.

Stat. Auth.: ORS 25.396; 25.427, 180.345
Stats. Implemented: ORS 25.378 & 25.396
Hist.: AFS 7-1994, f. & cert. ef. 4-1-94; AFS 3-1995, f. 1-27-95, cer. ef. 2-1-95; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 3-1995, f. 1-27-95, cert. ef. 2-1-95; AFS 34-1995, f. 11-27-95, cert. ef. 12-1-95; AFS 39-1995, f. & cert. ef. 12-15-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0176; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4080; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4100
Initiated Income Withholding

(1) On any support order entered or registered in Oregon in which the obligor is not subject to immediate income withholding, including those cases where an exception has been granted pursuant to OAR 137-055-4080, the obligor will become subject to income withholding on:

(a) The date on which the payments which the obligor has failed to make under a support order are at least equal to the support payable for one month;

(b) The date on which the obligor requests that withholding begin; or

(c) The date on which the obligee or child attending school under ORS 107.108 and OAR 137-055-5110 requests that withholding begin if:

(A) The court or enforcing agency makes a finding that withholding would be in the best interests of the child(ren), as defined in OAR 137-055-4060; and

(B) 14 days advance written notice and opportunity to object has been given to the obligor.

(2) Except as provided in subsection (1)(c), the income of the obligor will become subject to income withholding without the need for a judicial or administrative hearing or for advance notice to the obligor.

(3) Pursuant to subsection (1)(c) of this rule, if the obligor has been granted an exception to withholding by a court, the holder of support rights who wants withholding must apply for withholding under this section by motion to the court.

Stat. Auth.: ORS 25.396; 25.427, 180.345
Stats. Implemented: ORS 25.378, 25.396, 656.234 & 657.780
Hist.: AFS 62-1985(Temp), f. & ef. 10-28-85; AFS 30-1986, f. & ef. 4-1-86; AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90, Renumbered from 461-035-0049; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1990, f. 12-13-90, cert. ef. 1-1-91; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0177; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4100; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4110
Termination of Income Withholding

On any case in which an income withholding order has been issued, the administrator will terminate withholding when:

(1) There is no longer a current order for support and all arrears have been paid or satisfied;

(2) The court or administrator makes a written finding and explanation that there is good cause not to require withholding consistent with OAR 137-055-4080(1).

(3) The parties agree in writing to an alternative payment method as provided in OAR 137-055-4120; or

(4) The child is in the custody of Department of Human Services or the Oregon Youth Authority and the obligor has requested an alternative payment method in writing.

(5) An exception to initiated withholding under sections (3) or (4) above may only be granted if:

(a) No arrears are owed on the case;

(b) The obligor has complied with the terms of any previously allowed exception to withholding; and

(c) When money is owed to the state under the support order, the state agrees in writing to the alternative payment method.

Stat. Authority: ORS 25.396
Stats. Implemented: ORS 25.396
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4120
Alternative Payment Method

(1)(a) If an exception to income withholding has been granted when support is accruing because the child(ren) is in the custody of the Department of Human Services (DHS) or the Oregon Youth Authority (OYA) as provided in ORS 416.417, an alternative payment method may be any method of paying support allowable pursuant to OAR 137-055- 5020, except:

(b) If the child(ren) is in the custody of DHS, electronic payment withdrawal (EPW) is not an allowable option.

(2) Except as provided in subsections (1)(a) and (b), for all cases receiving support enforcement services under ORS 25.080, the only alternative method of paying support to income withholding is through EPW from the obligor's bank account as described in OAR 137-055-5020.

(3) The administrator may allow payment by EPW if:

(a) The obligor qualifies for an exception to income withholding as provided in OAR 137-055-4080 or 137-055-4110;

(b) The obligor submits a completed application for EPW;

(c) The obligee consents to payment by EPW; or

(d) If the only payee on the case is a child attending school under ORS 107.108 and OAR 137-055-5110, the child attending school consents to payment by EPW; and

(e) The obligor continues to pay the amount due for current support each month until the Division of Child Support (DCS) activates the EPW payment method on the case.

(4) The administrator will not continue to forward a request for consent to the obligee or the child attending school if applicable, if the obligee or the child attending school has failed to consent at any time within the previous six months.

(5) An alternative payment method will remain in effect:

(a) Regardless of any subsequent modifications to the child support order, provided the obligor pays off any arrears resulting from the modification within 30 days of when the administrator codes the modification onto the case record, unless a court orders otherwise.

(b) Until the case qualifies for initiated income withholding as provided in OAR 137-055-4100, including cases where the arrears result because the obligor's financial institution refuses to honor an EPW payment, when presented for payment by DCS, due to insufficient funds in the obligor's account.

Stat. Auth.: ORS 25.396, 25.427 & 180.345
Stats. Implemented: ORS 25.396
Hist.: AFS 24-1991, f. 11-26-91, cert. ef. 12-1-91; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 30-1994, f. 12-29-95, cert. ef. 1-1-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0178; AFS 14-2001, f. 6-29-01,

cert. ef. 7-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4120; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4130
Reduced Income Withholding

(1) The Department of Justice may set a lesser amount to be withheld if:

(a) Withholding is only for arrears, the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for a child the obligor has a duty to support; and

(b) If arrears are owed to the obligee, the obligee agrees to a reduced withholding amount; and

(c) If arrears are owed to the child attending school under ORS 107.108 and OAR 137-055-5120 and the child attending school agrees to a reduced withholding amount; or

(d) The child(ren) is currently in paid state care or custody and the state and the obligor agree in writing to a reduced amount of withholding when there is evidence that:

(A) The order to withhold is a barrier to reunification of the family or rehabilitation of the youth; or

(B) Is prejudicial to the obligor's ability to provide for another child the obligor has a duty to support.

(2) When the child(ren) is currently in paid state care or custody, the Division of Child Support (DCS) may submit an agreement for reduced income withholding to the Department of Human Services (DHS) child welfare program or the Oregon Youth Authority (OYA) for approval or denial.

(3) Upon receiving notice of an approval or denial of an agreement, DCS will notify the obligor. If the DHS child welfare program or OYA do not respond within 30 days of receiving an agreement, the agreement will be deemed denied.

(4) If the agreement is approved, the agreement does not take effect until it has been signed by the obligor and returned to DCS.

(5) If the obligor does not agree with the agency's denial of an agreement, the obligor may file a grievance with the DHS child welfare program or OYA pursuant to OAR 413-010-0450 or 416-100-0070.

(6) A written agreement for a reduced amount of withholding may terminate and income withholding for the full amount allowable by law may be reinstated, unless the obligor otherwise qualifies for an exception pursuant to OAR 137-055-4080, when:

(a) The child(ren) leave(s) the care or custody of the state agency to which support has been assigned;

(b) According to the case record or as notified by the DHS child welfare program or OYA, the obligor is out of compliance with the agreement; or

(c) The time period covered by the agreement has expired.

Stat. Auth.: ORS 25.396 & 180.320 - 360
Stats. Implemented: ORS 25.396
Hist.: DOJ 14-2001, f. 12-28-01, cert. ef. 1-2-02, DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 137-050-0605; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4160
Contested Income Withholding

(1) The only basis for contesting an order to withhold is a mistake of fact. A mistake of fact means either:

(a) An error in the amount due for current support or for arrears;

(b) An error in the identity of the obligor; or

(c) The order was entered prior to October 1, 1989, and does not include the immediate income withholding language.

(2) Payment of all arrears will not, by itself, be a basis for not implementing withholding.

(3) If the obligor is contesting the withholding on the basis of an error in the amount due for current support or arrears pursuant to subsection (1)(a) of this rule, the obligor's contest must be in writing. The process for contesting a withholding will be as described in ORS 25.405.

(4) The administrator will notify all parties of the administrator's determination and of the right to appeal the determination.

(5) If an obligor contests an order to withhold issued by the administrator the Division of Child Support (DCS) will hold any funds collected pursuant to the withholding order, and will not distribute such funds to the obligee, or other payee, subject to the following:

(a) If the obligor contests the withholding on the basis of an error in the identity of the obligor, DCS will hold all payments collected pursuant to the withholding order until the administrator has made its determination;

(b) If the obligor contests the withholding on the basis of an error in the amount due for current and/or past-due support, DCS will hold all payments collected for past-due support pursuant to the withholding order, except for those amounts the obligor does not contest are owed, until the administrator has made its determination;

(c) Once the administrator has made its determination, and regardless of whether or not the determination is appealed to the court, DCS will:

(A) Refund to the obligor, all amounts so held that are determined to have been collected in error;

(B) Disburse, to the obligee or as otherwise appropriate, all amounts so held that are determined to have been collected correctly.

(6) Neither the initiation of proceedings to contest an order to withhold pursuant to this rule, nor a motion or request to contest an order to withhold, nor an appeal of the decision of the administrator with regard to the obligor's contesting of the order to withhold, will stay, postpone, or defer ongoing withholding unless otherwise ordered by a court.

Stat. Auth.: ORS 25.427 & 180.320 - 360
Stats. Implemented: ORS 25.405
Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0181; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4300
Support Enforcement by Methods Other than Income Withholding

(1) Income withholding, pursuant to OAR 137-055-4060 through 137-055-4180, will be the preferred method that the administrator will use to collect current and past-due support.

(2) If payment is not received in the amount of current support due for each month plus an amount toward any existing arrears, the administrator will pursue additional enforcement actions as specified under this rule.

(a) For purposes of this section, "additional enforcement actions" means actions in addition to income withholding under any of the following circumstances:

(b) The administrator will pursue additional enforcement actions where any of the following circumstances occurs:

(A) Collection by income withholding cannot be attained under OAR 137-055-4060 through 137-055-4180.

(B) Income withholding is collecting less than the amount of current support due for each month; or

(C) Income withholding is collecting the full amount of current support due for each month, but is collecting nothing toward arrears on the case.

(D) No current support is owed, and income withholding is collecting nothing toward arrears or the obligor is not paying a negotiated or agreed-upon amount toward arrears.

(c) All such enforcement actions will be in compliance with, and as appropriate under, state and federal law. The administrator will not initiate or take any action under this rule that is precluded or prohibited by state or federal law due to the circumstances of the individual case.

(d) The administrator will take such action within 30 calendar days of whichever of the following occurs later:

(A) Arrears have occurred; and

(B) The administrator has located the obligor, the obligor's employer, or other assets or sources of income, provided such information is sufficient to enable the next appropriate action on the case.

(e) If service of process is required before taking an enforcement action:

(A) Service must be completed or unsuccessful diligent attempts to serve process must be documented, and enforcement action must be initiated if process is served, no later than 60 calendar days of initially identifying arrears or of locating the obligor or the obligor's employer, assets, or other sources of income, whichever occurs later.

(B) If a court action is necessary, the requirement to initiate enforcement action within no later than 60 calendar days is met if the administrator has initiated action to enter the case with the court for a court hearing or action.

(f) The administrator is not required to perform those "additional enforcement actions" that the Oregon Child Support Program already provides automatically for every case meeting specified criteria. Further, a case does not necessarily need to meet the criteria for "additional enforcement actions", under section (2) of this rule, in order for the Oregon Child Support Program to automatically provide the enforcement methods under this subsection for every case meeting specified criteria. These enforcement methods include, but are not limited to:

(A) Interception of state and federal tax refunds, under OAR 137-055-4320 through 137-055-4340.

(B) Release of information to consumer credit reporting agencies, under OAR 137-055- 4560.

(g) If any enforcement action specified under this rule, whether by itself or in combination with collections attained through income withholding, results in collection of current support each month plus payments toward reducing any arrears that exists on a case, the administrator is not required to pursue further additional enforcement actions on that case. However, the administrator will resume pursuing additional enforcement actions if any of the circumstances under subsection (2)(b) of this rule subsequently occurs.

(3) The administrator will take additional enforcement action, under section (2) of this rule, by attempting to determine if the obligor has any income, property, assets, or resources from which support can be collected.

(a) The administrator will attempt this determination by utilizing any one or more of the following:

(A) Information about the obligor's location, employment, or other income or assets, that the administrator obtains from the obligee or from any other person. The administrator will respond to the obligee, in writing, by telephone, or in person, within 30 days of ascertaining whether or not information submitted by the obligee, on the obligee's own initiative, was accurate or useable.

(B) Information accessible or attainable through the Child Support Enforcement Automated System (CSEAS), or other electronic data sources

(C) Discovery methods, including financial disclosure exams, or written interrogatories, unless any of the following are true:

(i) The administrator has not located the obligor, and is therefore not able to pursue such methods.

(ii) The obligee has not asserted to the administrator, or the administrator has no reason to suspect, that the obligor has specific and verifiable income, property, resources, or assets against which the administrator may take effective action to collect support.

(iii) The administrator has located or verified the obligor's income, property, assets, or resources through other means, or otherwise can do so, and therefore does not need to rely on discovery methods.

(b) The administrator will document the case record with the following:

(A) The administrator's efforts to determine or verify if the obligor has property, assets, or resources, against which the administrator may take action to collect support.

(B) Actions the administrator takes to collect support against such property, assets, or resources.

(4) When the administrator determines that an obligor has income, property, assets, or resources against which enforcement action may be taken, the administrator will, in compliance with and as appropriate under other provisions of this rule and of state and federal law, take one or more of the following specific actions:

(a) Ask the court to require the obligor to post bond or security to ensure payment of support, unless the administrator has determined that:

(A) Based on the experiences of the administrator in its locality, a bond or security is not likely to be commercially available to the obligor for this purpose;

(B) The obligor is legally and financially unable to pay the cost of a bond or security;

(C) Such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator;

(D) Any funds the obligor has to purchase a bond would be better applied to requiring the obligor to make payment for current or past-due support. However, on cases where current support is owed to the obligee or to a child attending school under ORS 107.108 and OAR 137-055-5110, and not assigned to the state, the obligee or child attending school must concur with this determination; or

(E) The obligor has taken action to purchase a bond or security without need for court action.

(b) File liens against real property or personal property that the obligor owns in Oregon, to the extent that a lien does not already exist under Oregon law, or take other effective actions to collect support from the value of such property such as by obtaining a writ of garnishment, unless the administrator has determined that:

(A) The obligor owns no property against which such action would be likely to produce a collection; or,

(B) Such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator.

(c) Garnish or attach other assets, or resources of the obligor, unless the administrator has determined that such action cannot reasonably be expected to produce collections sufficient to justify the cost to the administrator. In cases where such action will result in additional taxes or penalties to the obligor, the administrator may negotiate with the obligor to determine an amount the obligor will need to retain to pay such additional taxes or penalties.

(d) Pursue suspension of any license the obligor may have, to the extent permissible under state law and rules.

(e) Prosecute the obligor for contempt of court, subject to section (5) of this rule.

(f) Prosecute the obligor for criminal non-support, subject to section (5) of this rule.

(g) Refer the obligor for federal criminal prosecution under the Interstate Child Support Recovery Act, subject to section (5) of this rule.

(5) Prosecution for contempt of court or for criminal non-support, or referral of obligors for federal criminal prosecution under the Interstate Child Support Recovery Act, is subject to the prosecutorial discretion of the administrator.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080
Hist.: AFS 27-1994, f. & cert. ef. 11-10-94; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0200; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4300; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4300; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4320
Collection of Delinquent Support Obligations Through the Oregon Department of Revenue

(1) The administrator may claim Oregon tax refunds otherwise due to be paid to an obligor, to collect:

(a) Support arrears;

(b) Unpaid award amounts from any judgment entered against the obligor for birth expenses or for the cost of parentage tests to establish a child's paternity.

(2) The Division of Child Support (DCS) will file such claims with the Oregon Department of Revenue (DOR) according to rules and procedures established by DOR.

(3) Referral of arrears will be a liquidated claim, debt, or account established by a court or administrative order.

(4) DCS will not refer any case where the case record indicate that one or more of the following is applicable:

(a) The arrears are less than $25;

(b) The obligor has filed for bankruptcy, as defined by federal bankruptcy code, unless the bankruptcy claim has been resolved and the administrator has legal authority to proceed with collection;

(c) The obligee has claimed "good cause" for not cooperating with efforts to establish or enforce support.

(5) DCS will distribute tax refunds recovered by this process as set out in OAR 137-055-6020.

(6) The Child Support Program will send an advance written notice to the parties of the intent to claim the tax refund and apply it to the obligor's account. The notice will advise of the obligor's right to an administrative review of the proposed action. The only issues that may be considered in the review are:

(a) Whether the obligor is the person who owes the support as indicated by the case record; or

(b) Whether the arrears indicated in the notice are correct.

(7) Upon receipt of the request for review, the administrator will schedule the review and notify the parties of the date, time and place of the review.

(8) At any time any refund is claimed, DOR will send by regular mail written notice to the obligor of the intention to apply the tax refund to the obligor's delinquent account. The notice will advise the obligor of the right to an administrative hearing regarding this action that:

(a) The obligor, within 30 days from the date of this notice, may request an administrative hearing before an administrative law judge;

(b) The request for hearing must be in writing.

(9) No hearing will be held if the obligor, after having been given due notice of rights to a hearing, has failed to exercise such rights in a timely manner as specified in the notice.

(10) No issues may be considered at the administrative hearing that have been litigated previously or where the obligor failed to exercise rights to appear and be heard or to appeal a decision which resulted in the accrual of the arrears.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.610 & 293.250
Hist.: AFS 13-1978, f. & ef. 4-4-78; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0004; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 30-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 7-1997, f. & cert. ef. 6-13-97; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0205; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4320; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4320; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4420
License Suspension

(1) For the purposes of this rule the following definitions apply:

(a) "License" means any of the licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driving privileges granted by the Department of Transportation under ORS chapter 807 which includes all driving licenses and permits, and all permanent and fee-based annual hunting and fishing licenses issued by the Oregon Department of Fish and Wildlife;

(b) "Administrative review" means a review of the obligor's objection to proposed action under this rule performed by the administrator to determine whether:

(A) The arrears exceed the threshold;

(B) The licensee is the obligor;

(C) The obligor is in compliance with a previous agreement;

(D) An income withholding order is in place and producing regular payments;

(E) The obligor has made payments in an amount greater than the monthly support amount for the three months previous to selection of the case and that those payments were not as a result of a garnishment, tax offset or some other enforcement action; and

(F) The obligor is ordered to pay current support payments.

(2) This rule governs the process for suspending any license as defined in subsection (1)(a) of this rule of any obligor in a child support case in which there is a judgment to pay current support and the original support order was entered at least three months prior to initiating the process for license suspension, who owes $2,500 or more in past-due child support or whose support arrears are equal to at least three times the current monthly child support obligation, whichever occurs later, subject to the provisions herein.

(3) Cases that qualify for initiation of the process described in this rule will be identified by data matches and terminal access with license issuing entities, and by information received from other sources. Information from other sources will be verified with the licensing agency. The Division of Child Support (DCS) will be the liaison with the licensing agencies. The administrator will verify issuance of licenses to individuals through DCS when those licenses have been identified by means other than data match or terminal access.

(4) If any of the following conditions are found, the administrator will take no further action toward suspension of a license under this rule until such a time as the condition no longer exists:

(a) The case is an arrears only case;

(b) The child support arrears are less than the standard set in section (2) of this rule, excluding any and all spousal support;

(c) The obligor has previously entered into an agreement and is in compliance with the agreement; or

(d) The obligor has made payments for the prior three months that have been for an amount greater than current support each month. These payments must not have been as a result of garnishment, tax offset or any non-income withholding enforcement action.

(5) If the administrator determines that none of the conditions in section (4) of this rule applies or no longer applies, the administrator may initiate or continue action under this rule. The administrator may use the process described in this rule as one of several enforcement options available and may exercise discretion to optimize collection potential in individual cases. The administrator will prioritize this enforcement option in decision making based on availability and application of other enforcement options and available staff resources.

(6) If the administrator determines that the case meets the criteria for action under this rule and decides to proceed, the administrator will initiate two notices to the obligor. One notice will be sent to the address of record of the issuing agency, and a second notice to the obligor's address of record on the case record. Both notices will be sent to the obligor by regular mail and will include a form to contest the suspension of the license. If the address of record maintained by the administrator and the issuing agency are the same, the administrator may send only one copy of the notice to suspend and the accompanying forms. A copy of the notice and forms sent to the obligor will be sent by regular mail to the other parties to the case.

(7) The content of notices in section (6) of this rule will contain the following information:

(a) The specific license(s) subject to suspension and a statement that other licenses may be subject to suspension;

(b) The name of the person whose license is subject to suspension, and social security number, if available, and date of birth, if known;

(c) The child support case number or numbers of the person subject to suspension;

(d) The amount of the arrears and amount of the current child support obligation;

(e) The procedure for contesting the suspension and the basis for contesting the suspension. The only grounds for contesting the suspension are:

(A) The child support arrears are less than the standard set in section (2) of this rule;

(B) There is mistake in identity of the obligor; or

(C) The obligor is in compliance with a previous agreement as provided by ORS 25.750 to 25.783.

(f) A statement that the obligor may enter into a written agreement, compliance with which will preclude suspension of the license. The obligor has 30 days from the date of the notice to contact the administrator about entering into a written agreement. The agreement must be entered into within 30 days of the obligor's contact with the administrator. If the obligor qualifies for a hardship pursuant to section (10) of this rule, the agreement may temporarily be for payment of less than the 120% of the current monthly child support obligation;

(g) A statement that the administrator may make a demand upon the obligor to furnish sufficient income information to determine an agreement amount and that failure to provide sufficient income information will result in license suspension;

(h) A statement that the obligor has 30 days from the date of the notice in order to contest the suspension by requesting an administrative review in writing on a form included with the notice; and

(i) A statement that failure to contact the administrator within 30 days from the date of the notice specified in this subsection and entry into a written agreement within 30 days of contacting the administrator, or to request an administrative review within 30 days from the date of the notice, will result in notification to the issuing agency to suspend the license.

(8) Any agreement under subsection (7)(f) of this rule must:

(a) Be in writing and signed by the obligor;

(b) Specify the due date for payments or, if the hardship provisions of section (10) of this rule apply, the dates for completion of other negotiated activities required of the obligor. The administrator may negotiate a due date other than the due date on the case record;

(c) State the amount of the payment. Unless the hardship provisions of section (10) of this rule apply, the amount of the payment will be the amount that could be obtained from an income withholding order pursuant to ORS 25.414. Assume Oregon minimum wage for the obligor in determining income level if the obligor claims income in an amount less than minimum wage and no evidence is found that the obligor has income in an amount greater than Oregon minimum wage;

(d) State that the payment may be made through income withholding (which may occur when the administrator did not previously know about the income source);

(e) State that the agreement may be amended if there is a change in the amount of current child support;

(f) State that the agreement may be amended if there is a change in income which would change the agreement amount per the calculations in subsection (8)(c) or section (10) of this rule;

(g) State that the agreement is terminated if the obligor fails to comply with the terms of the agreement;

(h) State that failure to comply with terms of the agreement will result in notification to the issuing agency to suspend the license;

(i) State that the agreement does not preclude other enforcement actions to collect current child support and arrears, including, but not limited, to income withholding, and state and federal income tax offset;

(j) Include a statement that the obligor is required to notify the administrator within 10 days when there is a change in employment; and

(k) State that information voluntarily provided may be used in other enforcement actions, including contempt actions.

(9) Any agreement made pursuant to this rule may be voided by the administrator if either subsections (9)(a) or (b) of this rule apply. If an agreement has been so voided, the administrator will begin the process of entering into a new agreement.

(a) The income of the licensee/obligor changes; or

(b) The licensee/obligor has under reported income in establishment of the agreement.

(10) Under the conditions and time frames set out in section (11) of this rule, an exception to the requirements of subsection (8)(c) of this rule may be made if the obligor claims a hardship. Hardships may be granted for conditions that limit an obligor's ability to pay the amount that could be obtained from an income withholding order pursuant to ORS 25.414. If the obligor claims a hardship and complies with the conditions for this exception, the administrator may enter into a compliance agreement with the obligor to:

(a) Require payment of 100 percent of the current support amount for the case if the obligor has only one child support case. If the obligor has multiple child support cases, the administrator may limit the amount of the payment agreement to the lesser amount of 100% of the current support

amount or that case's pro rata share of 50 percent of disposable earnings based on amounts of monthly support obligations per case; or

(b) Require other terms of compliance if the obligor demonstrates an inability to pay the amount per subsection (a) of this section. The compliance agreement may:

(A) Require a payment amount lower than 100% of the current support amount;

(B) Require a combination of a lesser payment amount and the obligor's participation in activities to enhance the obligor's ability to pay child support; or,

(C) If the obligor demonstrates no ability to pay, require the obligor to participate in activities to enhance the obligor's ability to pay child support with no payment.

(11) The conditions and time frames for exceptions under section (10) of this rule are:

(a) For a hardship based on a claim of a substantial change in circumstances, the obligor agrees to request a periodic review and modification or a substantial change in circumstance modification under the provisions of OAR 137-055-3420. The compliance agreement will be reviewed by the administrator after the administrator finishes the review and modification process. If the compliance agreement is granted pending the obligor's request for a modification and the obligor has not completed and returned the necessary paperwork to the administrator within 30 days, the compliance agreement will be reviewed for possible termination.

(b) For a hardship claim when the obligor does not qualify for a change in circumstances modification and for any other hardship claim, the administrator will review the compliance agreement at least once during the initial three month period. The administrator may enter into further compliance agreements with the obligor, however, at minimum, the terms of compliance will be reviewed after each six month period and the payment amount increased until the amount of the payment is the amount that could be obtained from an income withholding order pursuant to ORS 25.414.

(12) The administrator will provide notice to the other parties of any agreement entered into by sending the parties a copy of the agreement.

(13) If the administrator determines that the suspension of the license should occur, the parties will receive written notice of such determination. The notice will include the following:

(a) The basis for the determination;

(b) The right to appeal the determination and a form on which to make the appeal;

(c) The time limit for making an appeal is 30 days; and

(d) That if no appeal of the suspension is received within 30 days, the licensing agency will be notified to suspend the license immediately.

(14) An appeal of the determination in section (13) of this rule will be to an administrative law judge and the suspension of the license is stayed pending the decision of the administrative law judge. The only grounds for an appeal are:

(a) There is a mistake in the amount of the arrears and the arrears balance is less than the threshold for initiation of action under this rule;

(b) A mistake in identity of the obligor; or

(c) That the obligor has previously entered into an agreement and is in compliance with that agreement.

(15) If the obligor fails to enter into an agreement or fails to appeal the determination within the time period allowed, or if the administrative law judge's order supports the suspension of the license, the administrator will send a notice to the issuing agency to suspend the license. A copy of this notice will be sent to the parties by regular mail.

(16) The notice to the issuing agency to suspend the license will contain the following:

(a) A statement that a child support case record is being maintained by DCS and the case is being enforced by the administrator; and

(b) A statement that the holder of the license is in arrears in excess of $2,500 or three times the current monthly support amount, whichever occurs later, and either:

(A) The holder has not entered into an agreement; or

(B) The holder is not in compliance with an agreement.

(17) At any time after suspension of the license, the obligor may request that the administrator make a review to determine if the condition(s) that resulted in the suspension continues to exist. The administrator will review the suspension and notify the issuing agency if it is determined that the license may be reinstated, contingent upon the requirements of the issuing agency, when any of the following conditions are met:

(a) There is no longer a current child support order;

(b) The arrears are less than the threshold for suspension;

(c) There is no longer a child support program case;

(d) The obligor has entered into an agreement and has shown compliance with the terms of the agreement; or

(e) There is an income withholding order now in place and producing regular payments.

(18) Notwithstanding section (17), at any time the administrator reviews the case and determines the condition(s) that resulted in the suspension no longer exist, the administrator will notify the issuing agency that the license may be reinstated, contingent upon the requirements of the issuing agency.

(19) In the event that an obligor has more than one child support case, the Child Support Program Director will determine and assign a single branch office that will be responsible for services relating to that obligor under this rule. All other enforcement services will be provided by the administrator otherwise assigned to the obligor's case(s).

Stat. Auth.: ORS 25.750, 180.345
Stats. Implemented: ORS 25.750 - 25.783
Hist.: AFS 11-1994, f. & cert. ef. 6-3-94; AFS 22-1994, f. 9-27-94, cert. ef. 10-1-94; AFS 26-1995, f. 10-20-95, cert. ef. 10-23-95; AFS 18-1996, f. & cert. ef. 5-10-96: AFS 37-1996, f. & cert. ef. 11-20-96; AFS 21-1997, f. & cert. ef. 11-7-97; AFS 13-1998, f. 8-21-98, cert. ef. 8-24-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0233; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 1-2002, f. 1-25-02, cert. ef. 2-1-02; AFS 9-2002, f. 6-26-02, cert. ef. 7-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4420; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4450
Expiration and Release of Judgment Liens

(1) When a judgment of the court or administrative order containing a money or support award is filed with the court administrator, it creates a judgment lien on all property owned by the obligor in the county where it is filed.

(a) A money award for past support or any lump sum support award will attach to all real property of the judgment debtor immediately upon entry of the judgment.

(b) A support award will not attach until it becomes an unpaid installment pursuant to section 2 of this rule.

(2) When an installment becomes due under the terms of a support award and is not paid a support arrearage lien attaches:

(a) to all real property of the judgment debtor in the county where the judgment is filed; and

(b) to any property acquired in that county by the judgment debtor after that date.

(3) A support arrearage lien remains attached to real property until:

(a) The judgment lien expires; or

(b) The judgment lien is released for a single piece of real property or all real property of the judgment debtor in that county; or

(c) Satisfaction is made for the unpaid installment(s).

(4) A judgment lien created as a result of a child support or money award for unpaid child support installments expires:

(a) 25 years after entry of the judgment that first establishes the support obligation if the judgment was entered on or after January 1, 1994.

(b) 10 years after entry of the judgment that first establishes the support obligation if the judgment was entered before January 1, 1994, and was not renewed under the law in effect prior to January 1, 2004.

(5) A judgment lien created as a result of a support award for spousal support expires:

(a) 25 years after entry of the judgment that first establishes the support obligation if the judgment was entered on or after January 1, 2004, unless a certificate of extension is filed as provided in ORS 18.185. However, in no circumstance may the judgment lien be extended beyond the judgment remedies as provided in OAR 137-055-4455.

(b) 10 years after entry of the judgment that first establishes the support obligation if the judgment was entered before January 1, 2004, and was not renewed per the law in effect prior to January 1, 2004.

(6) An obligee may authorize the State of Oregon to release a lien against real property of an obligor when the obligee has submitted a signed and notarized lien release form to the administrator.

(7) If a release of lien is filed for all real property of the judgment debtor in a county, a judgment lien may be reinstated as provided in ORS chapter 18.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 18.005 - 18.845
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4520
Collection and Distribution of Support Through Garnishment Proceedings

(1) The administrator may utilize garnishment proceedings in accordance with ORS Chapter 18 for the purpose of collecting past due support.

(2) When the administrator receives a collection from a garnishment proceeding, the Division of Child Support (DCS) will hold the collection for 40 days if the garnishee is making a payment of other than wages or 120

days if the garnishee is making a payment of wages before distributing any amounts due a party from the collection.

(a) This requirement is to accommodate the possibility that the administrator may have to return funds from the collection to the garnishee, the obligor, or the court, as a result of the obligor or any person who has an interest in the garnished property having made a challenge to garnishment in accordance with ORS Chapter 18.

(b) The administrator will waive this requirement to hold the collection, and will apply the collection to the case for immediate distribution, in any case where the obligor provides the administrator with a signed and notarized statement expressly waiving the right to make a challenge to garnishment and requesting that the administrator apply and distribute the payment immediately.

(3) Notwithstanding section (1) of this rule, when the administrator initiates garnishment proceedings under ORS Chapter 18 against the following kinds of lump sum payments, the amount garnished will be limited to 25% of such lump sum payments. These include lump sum payments on a settlement or judgment from:

(a) Disability benefits (except SSI);

(b) Public or private pensions, unless otherwise ordered by a court;

(c) Health insurance proceeds and disability proceeds from life insurance policies;

(d) Veteran's benefits and loans;

(e) The first $10,000 of payment on account of personal bodily injury, amounts over $10,000 are not limited to 25%;

(f) Payment in compensation of loss of future earnings reasonably necessary for support of an obligor and any current dependents; and

(g) Workers' compensation benefits.

(4) Upon receipt of a notice of the challenge to garnishment from the clerk of the court, the administrator will file with the clerk of the court a response to the challenge to garnishment, attaching copies of the writ of garnishment, garnishee response, debt calculation and any supporting documentation necessary or helpful to the court in making a determination of the challenge to garnishment.

(5) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645 and notice of a challenge to garnishment is received, the administrator will attach to the response described in section (4), copies of all judgments for which the writ is issued and a debt calculation for each referenced judgment.

(6) When the contents of a bank account are garnished and the obligor makes a challenge to garnishment which claims that all or some portion of the contents of the account came from lump sum payments listed in section (3) of this rule, the administrator may return to the obligor the portion of such lump sum payments received from that account in excess of 25%, as appropriate.

(7) When the garnishee is a credit union, the credit union may retain the par value of the garnished account, defined as the face value of an individual credit union share necessary to maintain a customer's membership.

Stat. Auth.: ORS 25.020, 180.345
Stats. Implemented: ORS 18.645, 25.020 & 25.080
Hist.: AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0238; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4520; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4520; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4540
Restriction of Passports

(1) When the Division of Child Support submits delinquent child support accounts for IRS tax refund offset pursuant to OAR 137-055-4340, the federal Department of Health and Human Services (DHHS) will select cases in which the delinquency is $5,000 or more for passport restriction.

(2) Passport restriction means the United States Secretary of State will refuse to issue a passport or may revoke, restrict or limit a passport which was previously issued.

(3) The parties will receive notice of passport restriction with the notice of tax refund offset specified in OAR 137-055-4340. The notice will advise the parties of the right to an administrative review regarding this action:

(a) A party may request an administrative review as specified in the notice;

(b) The only issues that may be considered in the review are:

(A) Whether the obligor is the person who owes the support balance as indicated by the case record; or

(B) Whether the support balance indicated by the official case record is correct.

(4) Upon receipt of the request for review, the administrator will schedule the review and notify the parties of the date, time and place of the review. The decision made in the review and the basis for this decision will be recorded in writing and mailed to the parties.

(5) Passport restriction may continue when the delinquency is reduced to less than $5,000.

(6) Where a passport has been restricted and the obligor has either paid the delinquency in full or entered into and shown compliance with an agreement pursuant to this rule, the CSP will give notice to the State Department to release the passport restriction. Notice will be by the process specified by DHHS.

(7) An agreement is either payments made by income withholding, an agreement pursuant to section (8), or an agreement for a hardship exception pursuant to section (10) of this rule.

(8) Any agreement under this section must:

(a) Be in writing and signed by the obligor;

(b) Specify the due date for payments. The administrator may negotiate a due date other than the due date on the case record;

(c) Assume Oregon minimum wage for the obligor in determining income level if the obligor claims income in an amount less than minimum wage and no evidence is found that the obligor has income in an amount greater than Oregon minimum wage;

(d) State the amount of the payment. When feasible, there must be a lump sum payment to pay the delinquency in full or an initial lump sum payment to significantly reduce the delinquency. The amount of any ongoing payments must be the amount that could be obtained from an income withholding order pursuant to ORS 25.414;

(e) State that the agreement may be amended if there is a change in the amount of current child support;

(f) State that the agreement may be amended if there is a change in income which would change the agreement amount per the calculations in subsection (8)(d) of this rule;

(g) State that the agreement is terminated if the obligor fails to comply with the terms of the agreement;

(h) State that failure to comply with terms of the agreement will result in notification to the State Department to restrict the passport;

(i) State that the agreement does not preclude other enforcement actions to collect current child support and arrears, including, but not limited, to income withholding, and state and federal income tax offset;

(j) Include a statement that the obligor is required to notify the administrator within 10 days when there is a change in employment;

(k) State that information voluntarily provided may be used in other enforcement actions, including contempt actions.

(9) Any agreement made pursuant to this rule may be voided by the administrator if either subsections (9)(a) or (b) of this rule apply.

(a) The income of the holder of the passport/obligor changes; or

(b) The holder of the passport/obligor has under reported income in establishment of the agreement.

(10) When ongoing monthly support is owed, under the following circumstances, an exception to the requirements in subsection (8)(d) of this rule may be made if the obligor claims a hardship. If an obligor claims a hardship and all of the conditions are met for this exception, the enforcement entity will make an exception and limit the maximum amount of the agreement to 100 percent of the current support amount for the case. If the obligor has multiple child support cases, the administrator may limit the amount of the agreement to the lesser of 100% of the current support amount or the case's pro rata share of 50 percent of disposable earnings based on amounts of monthly support obligations per case. The conditions and time frames for exceptions are:

(a) The obligor requests a periodic review and modification or a substantial change in circumstance modification under the provisions of OAR 137-055-3420 or requests such a review and modification and is referred to the appropriate enforcement entity office to make the request. This exception will terminate after the administrator finishes the review and modification process. If the exception is granted pending the obligor's request for a periodic or substantial change in circumstances review and modification and the obligor has not made such a request to the appropriate administrator within ten days, the exception may be terminated. If the obligor must ask another state for a review and modification, the obligor must furnish verification to the administrator within 30 days that such a request was made to the other state. If such verification is not provided, this exception may be terminated.

(b) All other hardship periods will terminate after a three-month period. These hardships may be granted for temporary conditions that limit an obligor's ability to make support payments.

(11) The administrator will provide notice to the other parties of any agreement entered into by sending the parties a copy of the agreement.

Stat. Auth.: ORS 25.625 & 180.345
Stats. Implemented: ORS 25.625
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-9; AFS 15-2000, f. 5-31-00, cert. ef. 6-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0234; AFS 2-2001,

f. 1-31-01, cert. ef. 2-1-01; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4540; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4540; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-4560
Consumer Credit Reporting Agencies

(1) The Division of Child Support (DCS) may enter into agreements with consumer reporting agencies to disclose information under section (2) of this rule only to an entity that has furnished evidence satisfactory for DCS to determine that the entity is a consumer reporting agency as defined in ORS 25.650. Under these agreements, DCS will provide such agencies with the names of obligors who owe past due support and will indicate the specific amount each obligor owes. Under these agreements, DCS will provide such information:

(a) Whether or not the agency has requested information on any specific obligor; and

(b) On a recurring or periodic basis.

(2) Before issuing a periodic report to a consumer reporting agency with information on any obligor, the DCS will provide the parties with advance notice of the intent to report the obligor's support balance to the consumer reporting agencies. The notice will be sent to the parties' last known addresses. The notice must:

(a) Indicate the balance to be reported to the consumer reporting agencies;

(b) Advise that the current balance will be reported to the consumer reporting agencies on a recurring basis without sending further notice to the parties;

(c) Advise of the obligor's right to contest the action within 30 calendar days of the date of the notice.

(d) Explain the process for contesting and advise that objections must be in writing on the form provided with the notice;

(e) Advise that the only issues that may be contested are:

(A) Whether the obligor is the person who owes the support balance indicated by the case record;

(B) Whether the support balance indicated in the notice is correct.

(3) If the obligor does not contest the action within the allowed 30-day period, DCS will release the information to the consumer reporting agencies.

(4) If the obligor contests the balance indicated in the notice the administrator will conduct an administrative review on the case and mail the results of the review to the parties.

(5) Once the administrative review is complete, DCS will release the information to the consumer reporting agencies except as specified in section (12) of this rule.

(6) Parties may contest the administrator's review and determination as provided in ORS 183.484.

(7) If the obligee or child attending school, contests the balance in the notice, the obligee or child attending school, may initiate an arrears establishment request pursuant to OAR 137-055-3240.

(8) If a court or agency of appropriate jurisdiction determines the balance owing is other than previously reported, DCS will update the consumer reporting agencies with the court's or agency's findings within 10 days after receiving a copy of the final order.

(9) If at any time an obligor contacts DCS in writing to state that the information that has been reported to the consumer reporting agency is incorrect, the administrator must, within 30 days of receiving notification of the dispute:

(a) Provide notice to the consumer reporting agency and the obligee that the information is being disputed;

(b) Conduct an administrative review of the case; and

(c) Provide the results of the review to the parties and the consumer reporting agency.

(10) Notwithstanding section (9), the administrator will not conduct an administrative review of the reported information more than once in any calendar year, unless an obligor presents new supporting documentation, to the administrator, that information reported to the consumer reporting agency is incorrect.

(11) When consumer reporting agencies ask DCS for information regarding the balance an obligor owes on a support case, DCS may provide available information after complying with the requirements of sections (1) through (8) of this rule. DCS will not charge the requesting agency a fee for this information.

(12) DCS may refer to the consumer reporting agencies, the name and support balance of all obligors who meet the criteria of sections (1) or (11) of this rule unless:

(a) The obligor pays the support balance in full;

(b) The obligor is found to not be the person who owes the child support balance indicated by the case record; or

(c) The administrator determines that the obligor is not delinquent in the payment of support.

(13) When DCS has made a report to a consumer reporting agency under section (1) of this rule, DCS will promptly notify the consumer reporting agency when the case record shows that the obligor no longer owes past due support.

(14) If paternity has been established and a consumer report is needed for the purpose of establishing or modifying a child support order, the administrator may request that a consumer reporting agency provide a report. At least 10 days prior to making a request for such report, the administrator must notify, by certified mail, the obligor or obligee whose report is requested that the report will be requested.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.650
Hist.: AFS 79-1985(Temp), f. & ef. 12-26-85; AFS 22-1986, f. & ef. 3-4-86; AFS 12-1989, f. 3-27-89, cert. ef. 4-1-89, Renumbered from 461-035-0051; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0670; AFS 11-1990, f. 3-27-90, cert. ef. 4-1-90; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 7-1996, f. 2-22-96, cert. ef. 4-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 18-2000, f. & cert. ef. 7-12-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0230; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4560; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4560; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5020
Payment of Support Obligations

(1) Regardless of the provisions of a support order, the obligor must make all support payments to the Division of Child Support (DCS) while the obligee receives assistance in the form of TANF cash assistance, foster care or Oregon Youth Authority services.

(2) The obligor must continue to pay support to DCS after assistance ends, for as long as arrears are assigned to the state or support enforcement services are provided.

(3) When a case with a support order is activated on the Child Support Enforcement Automated System, DCS will send notice to the parties of the requirement to pay through DCS. Except as provided in OAR 137-055-5060, DCS will begin billing in the first full calendar month following 30 days from receipt of the referral or from the date the TANF benefits are issued. DCS will determine the arrears on a newly activated case pursuant to OAR 137-055-3240.

(4) An obligor may pay DCS by money order, personal check, certified check, cashier or traveler's check, earnings allotment, cash or by authorizing electronic payment withdrawal (EPW) from the obligor's account at a financial institution.

(5) Payment by EPW may be established by completing an application furnished by and delivered to DCS, subject to the following conditions:

(a) The obligor's financial institution must be a participant in the Oregon Automated Clearinghouse Association;

(b) The obligor must be subject to a support order requiring payment to DCS or support enforcement services are being provided under ORS 25.080;

(c) The application must be complete and signed by all signatories to the obligor's account at the financial institution;

(d) The application must establish a monthly withdrawal date, no later than the monthly support due date, and the amount to be paid to DCS on each monthly withdrawal date from the obligor's account at the financial institution;

(e) DCS will notify the applying parties by mail if they qualify for the EPW process and of the initial withdrawal date;

(f) The obligor may revoke the EPW authorization by notifying DCS at least 10 days before the monthly withdrawal date;

(g) DCS may revoke the authorization when there are insufficient funds in the obligor's account to make the authorized payment and no advance notice of that has been received. DCS will mail a notice of revocation to the parties;

(h) DCS may refuse an obligor's application if it is not fully completed, or if the obligor has made any support payment to DCS with insufficient funds in the 12-month period preceding the obligor's application.

Stat. Auth.: ORS 25.080, 25.427 & 180.345
Stats. Implemented: ORS 25.020 & 25.396
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 4-1991, f. 1-28-91, cert. ef. 2-1-91; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0020; AFS 14-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5025
Payment of Child Support to an Escrow Agent

(1) If current or past support is not assigned to the State of Oregon or another state, the parties may elect for support payments to be made to an escrow agent licensed under ORS 696.511 to accept and disburse support payments by electronic fund transfer.

(2) The election must be in writing and filed with the court that entered the support order and include:

(a) The signatures of the parties;

(b) The amount of the support payment and date the payment is due;

(c) The court case number; and

(d) The name of the escrow agent and account number into which the payments are to be electronically transferred.

(3) If IV-D services are being provided and the order is not otherwise subject to ORS 25.020, upon receipt of a court order or election of the parties to make payments to an escrow agent, the administrator will close its case and discontinue services:

(a) After expiration of the 60-day case closure notice as provided in OAR 137-055-1120; or

(b) Immediately upon the signed written request of the parties waiving the 60-day notice.

(4) An election will terminate if:

(a) An application for services is received by the Child Support Program subsequent to an election; or

(b) Support is assigned to the State of Oregon or another state.

(5) When the administrator establishes arrears pursuant to OAR 137-055-3240 and the parties previously made payments through an escrow agent as provided in section (1), the administrator may use the payment history of the escrow agent to establish arrears for any time period escrow services were provided.

Stat. Auth.: ORS 25.030
Stats. Implemented: ORS 25.030 & 25.130
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5110
Child Attending School

The purpose of this rule is to provide additional information as to how the Child Support Program (CSP) will apply the provisions of ORS 107.108 when the order or modification provides for support until the child is age 21, so long as the child is a child attending school in accordance with ORS 107.108.

(1) In addition to the definitions found in ORS 107.108, as used in OAR chapter 137, division 55, the following terms have the meanings given below:

(a) “Active member of the military” means:

(A) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the “armed forces”), who is serving on active duty; or

(B) A member of the National Guard who is serving full-time National Guard state or federal active duty; or

(C) A cadet at a federal service academy.

(b) “Adult child” means a child over the age of 18 and under the age of 21, who is not married or otherwise emancipated, and is not currently a child attending school.

(c) “Child attending school” has the meaning given in ORS 107.108, except a child attending school does not include an active member of the military.

(d) “Satisfactory academic progress” means:

(A) For a child attending high school who is over age 18 but under age 21, enrollment in school and meeting attendance requirements or as defined by the school; or

(B) For a child attending post high school classes, as defined by the higher educational institution.

(2) If the obligor has not provided the child attending school with an address to send the documents required by ORS 107.108 to, the administrator, pursuant to OAR 137-055-1140(7), may release the address of record of the obligor to the child attending school. If the obligor does not provide an address to the CSP or to the child, the obligor’s failure to receive required documents is not a basis for objecting that a child does not qualify as a child attending school.

(3) If there has been a finding and order of nondisclosure on behalf of the child attending school pursuant to ORS 25.020;

(a) The child may send the obligor’s copy of the initial notice of intent to attend or continue to attend school to the administrator for the administrator to forward to the obligor. The child must submit a copy of the documents to the administrator within the time periods set out in ORS 107.108. The administrator will redact the following information prior to sending a copy of the documents otherwise required to be provided to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver’s license number;

(E) Employer’s name, address and telephone number; and

(F) Name of registrar or school official.

(b)(A) The written consent form required under ORS 107.108 must authorize the administrator to contact the school.

(B) The administrator will contact the school once each academic year and will provide information to the obligor sufficient to confirm the child’s status as a child attending school.

(4) If a child attending school is in the care of the Oregon Youth Authority (OYA), any and all reporting duties of the child attending school will be the duty of OYA.

(5) DOJ will distribute support directly to the child attending school, unless good cause is found to distribute support in some other manner. For purposes of this section “good cause” may include:

(a) The child is in the care of OYA;

(b) The child provides written notarized authorization for distribution to the obligee;

(c) The court, administrative law judge or administrator orders otherwise; or

(d) The administrator is enforcing the Oregon order at the request of another state and that state has indicated they are unable to distribute support directly to the child.

(6)(a) If the administrator makes a finding that the support payment should be distributed to the obligee under section (5)(b), the administrator will send a notice of redirection of support to the parties.

(b) A party may contest the administrator’s finding as provided in ORS 183.484.

(7) An objection based on the requirements of ORS 107.108 may be made by any party to the support order. Unless new supporting documentation can be provided, an objection can only be made once per semester or term as defined by the school, or three months from the date of a previous objection if the school does not have semesters or terms.

(8) When support has been suspended under ORS 107.108 and the adult child subsequently complies with the requirements for reinstatement, the written confirmation and proof of written consent will be considered as an application for services if the case has been closed pursuant to OAR 137-055-1120.

(9) When the administrator has suspended or reinstated a support obligation pursuant to ORS 107.108, a party may request an administrative review of the action within 30 days after the date of the notice of suspension or reinstatement.

(a) The only issues which may be considered in the review are whether:

(A) The child meets the requirements of a child attending school;

(B) The written notice of the child’s intent to attend or continue to attend school was sent to the parent ordered to pay support;

(C) The written consent was sent or proof of written consent was received.

(b) The burden of proof for the administrative review is on the requesting party to provide documentation supporting the allegation(s).

(10)(a) In addition to the rights afforded under ORS 107.108, if the obligee claims good cause under OAR 137-055-1090, the child attending school may apply for services to enforce the existing support obligation on behalf of the child attending school only.

(A) The application will be handled in the same manner as outlined in OAR 137-055-1090(9)(a)–(c).

(B) If the child attending school applies for services, and services are provided under ORS 25.080, all arrears for that child will accrue to the child attending school as provided for in OAR 137-055-6021, until the child’s 21st birthday and then will be file credited off the case.

(11) If a court orders payment from a higher education savings plan in lieu of support under ORS 107.108;

(a) The administrator will cease collection and billing actions on behalf of that child at age 18. If the support order is for a single or last remaining child the department will close the case unless there are arrears on the case.

(b) If payments are ordered from a higher education savings plan and the court has not provided for a modification of the support amount for any remaining children of the order, this is a substantial change of circumstances for purposes of modifying the support order.

(c) If payment from a higher education savings plan has been ordered, the administrator will not take action to subsequently modify the support order to include child attending school support provisions for that child.

(12) Except for support orders originally issued by a state other than Oregon and being enforced under the provisions of ORS 110.303 to 110.452, if the most recent order or modification for support cites ORS 107.108 or otherwise provides for support of a "child attending school," the administrator will follow the provisions of ORS 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020, 107.108 & 180.345
Stats. Implemented: ORS 25.020, 25.080, 107.108 & 416.407
Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5120
Child Attending School — Arrears

(1) Unless otherwise provided by a support judgment, a child attending school is not a judgment creditor to the support order and the provisions of this rule apply.

(2)(a) Notwithstanding section (1), support for a child attending school that is not paid when due will accrue to a child attending school account and any arrears payment received prior to the child turning age 21 will be distributed to the child attending school as outlined in OAR 137-055-6021.

(b) When the child attending school turns age 21, any arrears in the child attending school account, will be transferred to the obligee as the judgment creditor.

(3)(a) When an obligee requests establishment of arrears for any time period during which a child was a child attending school, the arrears will be established to the child's account.

(b) If the child attending school is the only, or last remaining child on the case, the administrator will not establish arrears for any time period when services were not being provided and support is only being paid for the child attending school. Arrears may only accrue to the child attending school account from the date the administrator begins providing child support services.

(4) A child attending school may not satisfy arrears but may agree to a credit for direct payment, pursuant to OAR 137-055-5240, against arrears which have accrued to the child attending school account only.

Stat. Auth.: ORS 25.020 & 180.345
Stats. Implemented: ORS 107.108
Hist.: AFS 21-1991, f. 10-23-91, cert. ef. 11-1-91; AFS 26-1991, f. 12-31-91, cert. ef. 1-1-92; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 18-1997(Temp), f. 9-23-97, cert. ef. 10-4-97; AFS 18-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0136; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 17-2002(Temp), f. 10-30-02, cert. ef. 11-1-02 thru 4-29-03; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5120; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5240
Credit for Support Payments not made to the Division of Child Support

(1) In accordance with ORS 25.020, on any support case where the obligor is required to pay support through the Division of Child Support (DCS), DCS will not credit the obligor's support account for any payment not made through DCS, except as provided in ORS 25.020 and this rule.

(2) The other provisions of this rule notwithstanding, on any case where an order of another state is registered in Oregon under ORS Chapter 110 for enforcement only, and either the issuing state, as defined in ORS 110.303(9), or the obligee's state of residence has an active child support accounting case open, DCS does not have authority to give credit for payments not paid through Oregon DCS. In any such case, the obligor seeking credit must request credit from the issuing state or the obligee's state of residence, whichever has the active child support accounting case. DCS will adjust its records to reflect credit for such payments only upon receiving notification from the issuing state or the obligee's state of residence, in writing, by electronic transmission, by telephone, or by court order, that specified payments will be credited.

(3) DCS will give credit for payments not made to DCS when:

(a) Payments are not assigned to the State of Oregon or to another state, and

(A) The obligor, obligee and the party(ies) who received the payment agree in writing that specific payments were made and should be credited; or

(B) The obligor and the child attending school under ORS 107.108 and OAR 137-055-5110, agree in writing that specific payments were made and should be credited for amounts that accrued during the time the child was a child attending school.

(b) Payments are assigned to the State of Oregon, and all of the following additional conditions are true:

(A) The parties make sworn written statements that specific payments were made;

(B) The parties present canceled checks, or other substantial evidence, to corroborate that the payments were made; and

(C) The administrator has given written notice to the obligee or the child attending school, prior to the obligee or the child attending school making a sworn written statement under subsection (b), of any potential criminal or civil liability that may attach to an admission of receiving the assigned support. Potential criminal or civil liability may include, but is not limited to:

(i) Prosecution for unlawfully receiving public assistance benefits.

(ii) Liability for repayment of any public assistance overpayments for which the obligee or child attending school may be liable.

(iii)Temporary or permanent disqualification from receiving public assistance, food stamp, or medical assistance benefits due to an intentional program violation being established against the obligee or child attending school for failure to report, to the administrator, having received payments directly from the obligor.

(c) The administrator is enforcing the case at the request of another state, regardless of whether or not support is assigned to that other state, and that state verifies that payments not paid to DCS were received by the other state or by the obligee directly. Such verification may be in writing, by electronic transmission, by telephone, or by court order.

(d) An order of an administrative law judge, or an order from a court of appropriate jurisdiction, so specifies.

(4) To receive credit for payments not made to DCS, the obligor may apply directly to the administrator for credit, by providing the documents and evidence specified in section (3) of this rule.

(5) Except as provided in section (2) of this rule if the obligee, a child attending school, or other state does not agree that payments were made, pursuant to subsection (3)(a) or (3)(c) of this rule, or does not make a sworn written statement under subsection (3)(b), the obligor may make a written request to the administrator for a hearing.

(a) An administrative law judge may order, by written final order following a hearing, that DCS must credit the obligor's support account for a specified dollar amount of payments not made through DCS, or for all payments owed through a specified date.

(b) DCS will credit the obligor's account to the extent specified by written order of an administrative law judge.

(c) Prior notice of the hearing and of the right to object will be served upon the obligee in accordance with ORS 25.085 and the child attending school.

(d) Prior notice of the hearing and of the right to object may be served upon the obligor by regular mail to the address provided by the obligor when applying for credit.

(e) Any such hearing conducted under ORS 25.020 and this rule is a contested case hearing in accordance with ORS 183.413 through ORS 183.470. Any party may also seek a hearing de novo in the Oregon circuit court.

(f) The other provisions of this section notwithstanding, an administrative law judge does not have jurisdiction under this section in cases where the administrator is enforcing another state's order.

(6) When an obligor wishes to request a contested case hearing, or when a party wishes to request a hearing de novo in the Oregon circuit court or to appeal a court order or a hearing order, responsibility for doing so rests solely with that party. Such responsibility includes preparation and filing of all forms and documents required by the court or administrative law judge, and payment of all fees required by the court. The administrator will not have any such responsibility on behalf of a party, except as specifically required by law or administrative rule.

(7) Nothing in this rule precludes DCS from giving credit for payments not made through DCS when a judicial determination has been made giving credit or satisfaction, or when the person to whom the support is owed has completed and signed a "satisfaction of support judgment" form adopted by DCS in accordance with OAR 137-055-5220.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020 & 25.085
Hist.: AFS 42-1995, f. 1-28-95, cert. ef. 1-1-96; AFS 8-1996, f. 2-23-96, cert. ef. 3-1-96; AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0157; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5400
Obligor Receiving Cash Assistance, Presumed Unable to Pay Child Support

(1) Cases for obligors receiving cash assistance as specified in ORS 25.245 from Oregon will be identified and processed as set forth in ORS 25.245. Obligors receiving cash assistance as specified in ORS 25.245 from another state or tribe must provide to the administrator written proof of receipt of such cash assistance. The written proof must:

(a) Be provided by the obligor to the administrator to initiate suspension and every three months thereafter;

(b) Include the date the cash assistance payment was first made, the amount of the cash assistance for each and every month in which cash assistance was received, and the ending date, if known, of the cash assistance;

(c) Be official documentation, recognized by the issuing agency, that covers each and every month that cash assistance was received, including but not limited to a benefits award letter, deposit record or receipt.

(2)(a) When an obligor has provided written proof of receipt of cash assistance pursuant to section (1) of this rule, the administrator will, subject to section (3) of this rule, credit the case for arrears accrued from the date the obligor submitted written proof of receipt of cash assistance back to the date the cash assistance was first made, but not earlier than October 6, 2001;

(b) When an obligor notifies the administrator that the obligor is no longer receiving cash assistance, the administrator will begin accrual and billing pursuant to the support order currently in effect with the next support payment due following the end of the last month that the obligor received public assistance;

(c) If the obligor fails to provide written proof of receipt of cash assistance pursuant to section (1) of this rule, the administrator will begin accrual and billing pursuant to the support order currently in effect with the next support payment due for the month following the month for which the obligor last provided written proof;

(d) If the obligor provides written proof of receipt of cash assistance pursuant to section (1) of this rule after failing to provide timely written proof of receipt of cash assistance within three months, thereby causing the administrator to begin billing and accrual pursuant to subsection (c) of this section, support accrual may be suspended and arrears may be credited pursuant to subsection (a) of this section.

(3)(a) Within 30 days of receipt of information that the obligor is receiving cash assistance as specified in ORS 25.245(1), the administrator must send a notice to all parties to the support order. The notice will contain a statement of the presumption that support accrual ceases and include the following:

(A) A statement of the month in which cash assistance was first made;

(B) A statement that unless the party objects, that child support payments have ceased accruing beginning with the support payment due on or after the date the obligor began receiving cash assistance, but not earlier than:

(i) January 1, 1994, if the obligor received Oregon Title IV-A cash assistance, Oregon general cash assistance, Oregon Supplemental Income Program cash assistance or Supplemental Security Income Program payments by the Social Security Administration; or

(ii) October 6, 2001, if the obligor received Title IV-A cash assistance or general cash assistance from another state or Tribe;

(C) A statement that the administrator will continue providing enforcement services, including medical support enforcement, if applicable, and services to collect any arrears;

(D) A statement that if the obligor ceases to receive cash assistance as specified in ORS 25.245(1), accrual and billing will begin with the next support payment due following the end of the last month that the obligor receives cash assistance or for which the obligor provided written proof;

(E) A statement that any party may object to the presumption that the obligor is unable to pay support by sending to the administrator a written objection within 20 days of the date of service;

(F) A statement that the objections must include a written description of the resource or other evidence that might rebut the presumption of inability to pay; and

(G) A statement that the entity responsible for providing enforcement services represents the state and that low cost legal counsel may be available.

(b) Included with each notice under this section will be a separate form for the party to use if they choose to file an objection to the presumption that the obligor is unable to pay support.

(4) The notice under section (3) of this rule will be served on the obligor by regular mail and the other parties by personal service or by certified mail. The administrator will document the service of all parties to the support order on the case record, and include the date of service.

(5) Except as provided in subsections (a) and (b) of this section, an administrative law judge, or the court, may grant credit or satisfaction against arrears that accrue for the month or months the obligor receives cash assistance as specified in ORS 25.245(1), if the administrator has not suspended the accrual or credited the child support case. Credit or satisfaction may not be granted for months:

(a) Prior to January 1, 1994, if the obligor received Oregon Title IV-A cash assistance, Oregon general cash assistance, Oregon Supplemental Income Program cash assistance or Supplemental Security Income Program payments by the Social Security Administration; or

(b) Prior to October 6, 2001, if the obligor received Title IV-A cash assistance or general cash assistance from another state or Tribe.

Stat. Auth.: ORS 25.245 & 180.345
Stats. Implemented: ORS 25.245
Hist.: AFS 4-1994, f. & cert. ef. 3-4-94; AFS 20-1998, f. & cert. ef. 10-5-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0120; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5400; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5420
Application for Credit and Satisfaction for Child Support Owing While Obligor Received Cash Assistance

(1) This rule contemplates an application for a credit and satisfaction pursuant to ORS 25.245(6) for any child support owing for months during which that obligor received cash assistance as defined in ORS 25.245.

(2) The following conditions apply to such application for credit and satisfaction:

(a) No credit or satisfaction will be given for periods for which the court or administrative law judge has previously declined to suspend the obligor's child support obligation in an action under ORS 25.245;

(b) No credit or satisfaction contemplated by ORS 25.245(6) will be given for child support coming due before January 1, 1994.

(3) An application for credit and satisfaction may be made to the administrator as follows:

(a) The administrator will provide a form "Application for Credit and Satisfaction";

(b) The application form will be provided to any person receiving support enforcement services under ORS 25.080 who requests such application or who raises concerns or questions regarding child support arrears incurred while receiving cash assistance, as defined in ORS 25.245;

(c) The administrator will provide notice to the nonrequesting party(ies) that an Application for Credit and Satisfaction has been made;

(d) Service of the Notice of Application for Credit and Satisfaction upon the nonrequesting party(ies) will be the same as provided in ORS 25.245(2);

(e) The administrator will provide an Objection and Request for Hearing form with service of the Notice of Application for Credit and Satisfaction upon the nonrequesting party(ies);

(f) If a party completes and returns the Objection and Request for Hearing within 20 days, the administrator will forward all relevant documents to the Office of Administrative Hearings;

(g) An administrative law judge will schedule a hearing and advise the parties of the time, place and method of hearing;

(h) If, after 20 days, no party has returned the Objection and Request for Hearing, the administrator will submit the form of the appropriate order to the administrative law judge for entry.

(4) Nothing in this rule precludes application directly to the court for the relief provided by ORS 25.245(6).

Stat. Auth.: ORS 25.020, 25.245, 180.345
Stats. Implemented: ORS 25.020 & 25.245
Hist.: AFS 23-1996, f. 5-31-96, cert. ef. 7-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0125; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5420; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5510
Request for Credit Against Child Support Arrears for Physical Custody of Child

(1) In accordance with ORS 416.425, the administrator may allow a credit against child support arrearages for periods of time during which the obligor has physical custody of the child(ren) when:

(a) Physical custody was pursuant to a court ordered parenting time schedule and the court order specifically states that the obligor is allowed a credit for parenting time that is not already factored into the monthly child support amount;

(b) Physical custody was with the knowledge and consent of the obligee; or

(c) The obligor has custody of the child(ren) pursuant to court order.

(2) A request for credit against child support arrears under this rule must be made in writing either:

(a) If the credit is requested for a time period immediately prior to the effective date of the modification; or

(b) Independently of a request for modification, for any time period within two years prior to the date of the request.

(3)(a) Credit for physical custody may only be given if the child(ren) is/are with the obligor for 30 consecutive days or the entire month for which credit is sought. When the obligor is seeking a credit for less than all of the children under a child support order, a credit may only be given if the order is not a class order as defined in OAR 137-055-1020.

(b) Credit for physical custody may not be given against any arrears which have accrued to a child attending school account under ORS 107.108 and OAR 137-055-5110.

(4) Notwithstanding subsections (3)(a) and (b), the credit may only be allowed to the extent it will not result in a credit balance, as defined in OAR 137-055-3490(1).

(5) The administrator will send to the parties by regular mail, or by service, as part of the modification action, notice and proposed order of the intended action, including the amount to be credited. Such notice will inform the parties that:

(a) Within 30 days from the date of this notice, a party may request an administrative hearing;

(b) The request for hearing must be in writing;

(c) The only basis upon which a party may object is that:

(A) The obligor did not have physical custody of all the child(ren) under the support order for the time periods requested;

(B) The obligor had physical custody of the child(ren), but the custody was not with the knowledge and consent of the obligee and the obligor does not have legal custody of the child(ren);

(C) The obligor had physical custody of the child(ren) pursuant to a court order for parenting time and the order does not allow the obligor a credit for periods of parenting time.

(6) Any appeal of the decision made by an administrative law judge must be to the circuit court for a hearing de novo.

(7) If a credit is allowed pursuant to this rule, the credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period for which the obligor had physical custody of the child(ren), the credit will be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period for which the obligor had physical custody of the child(ren), the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

(d) The terms used in this section are as defined in OAR 137-055-6020.

Stat. Auth.: ORS 180.345 & 416.455
Stats. Implemented: ORS 416.425
Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-5520
Request for Credit Against Child Support Arrears for Social Security or Veterans' Benefits Paid Retroactively on Behalf of a Child

(1) In accordance with ORS 107.135, the purpose of this rule is to define the process for allowing a credit against child support arrears for Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit.

(2) As used in this rule, Social Security benefits are as defined in OAR 137-050-0320.

(3) As used in this rule, Veterans' benefits include both apportioned Veterans' benefits and Survivors and Dependents Educational Assistance, as defined in OAR 137-050-0320.

(4) The request for credit against arrears will be considered if submitted within 180 days of the date of the determination letter from the Social Security Administration (SSA) or the Department of Veterans' Affairs (DVA) regarding a retroactive payment on behalf of the child.

(5) A request for credit against a child support arrears for Social Security or Veterans' benefits paid retroactively on behalf of the child must be made either:

(a) With a request for a periodic review and modification or a substantial change in circumstance modification if there is a current support obligation for that child. The modification must have an effective date on or after October 23, 1999; or

(b) Independently of a request for a modification if there is no longer a current support obligation for that child.

(6) A request for credit against arrears made within the time frames set out in section (4) will be treated as a request for a change of circumstances modification. The party may otherwise qualify for a modification pursuant to OAR 137-055-3420.

(7) A party must provide documentation of the SSA or DVA retroactive payment paid on behalf of the child.

(8)(a) The credit for Survivors and Dependents Educational Assistance will be a dollar for dollar credit against the child support arrears; and

(b) The credit for Social Security and apportioned Veterans' benefits may be a dollar for dollar credit against the child support arrears.

(9) Notwithstanding subsections (8)(a) and (b), the maximum credit allowed will be limited to the amount of the child support arrears. In no circumstances will the credit exceed the amount of the retroactive SSA or DVA payment made on behalf of the child.

(10) The administrator will send to the parties by regular mail notice and proposed order of the intended action, including the amount to be credited and how the amount was calculated. Such notice will advise the parties of the right to an administrative hearing regarding this action:

(a) Within 30 days from the date of this notice, a party may request an administrative hearing as specified in the notice;

(b) The request for hearing must be in writing;

(c) The only basis upon which a party may object is that:

(A) The lump sum payment was not received; or

(B) The lump sum payment amount used in the calculation is not correct.

(d) Any appeal of the decision made by an administrative law judge will be to the circuit court for a hearing de novo.

(11) If no timely written request for hearing is received, the order will be filed in circuit court.

(12) If the credit determined in subsections (8)(a) and (b), is less than the amount of arrears owed per section (9), the file credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period covered by the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period covered by of the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020 & 107.135
Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0159; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5520; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5520; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6021
Distribution: General Provisions

The terms used in this rule have the meanings set out in OAR 137-055-6020.

(1) The Department of Justice (DOJ) will distribute support payments within two business days after receipt if sufficient information identifying the payee is provided, except:

(a) Support payments received as a result of tax refund intercepts or administrative offsets will be distributed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund;

(b) Support payments received from a garnishment, issued pursuant to ORS chapter 18, will be held for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages unless the obligor waives the right to make a challenge to a garnishment as set out in OAR 137-055-4520 or, if the obligor or any person who has an interest in the garnished property makes a challenge to garnishment, the support payment will be sent to the court where the challenge to garnishment has been filed;

(c) Support payments for future support will be distributed as provided in section (10) of this rule;

(d) Support payments for less than five dollars:

(A) May be delayed until a future payment is received which increases the payment amount due the family to at least five dollars; or

(B) May be retained by DOJ if case circumstances are such that there is no possibility of a future payment, unless the obligee requests issuance of a check.

(e) When an obligor contests an order to withhold, funds will be disbursed pursuant to OAR 137-055-4160(5).

(2) DOJ will distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward support arrears, not to exceed the amount of arrears.

(3) DOJ may send support payments designated for the obligee to another person or entity caring for the child(ren); however, prior to doing so, DOJ will require a notarized statement of authorization from the obligee or a court order requiring such distribution. DOJ will change the payee to a private collection agent that the obligee has retained for support enforcement services only in accordance with OAR 137-055-6025.

(4) Child support and spousal support have equal priority in the distribution of payments.

(5)(a) For Oregon support orders or modifications, a prorated share (unless otherwise ordered) of current support payments received within the month due will be distributed directly to the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110.

(b) Any arrears resulting from unpaid current support to the child attending school will accrue to the child until the child reaches the age of 21, at which time arrears will revert to, and be owed to, the obligee.

(c) Any payment received on arrears, except for a federal tax offset, will be distributed on in equal shares to the obligee and the child attending school until the child reaches the age of 21.

(6) If the obligor has a current support obligation for multiple children on a single case, those children have different assistance status and the order does not indicate a specified amount per child, current support payments will be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases will be distributed as provided in OAR 137-055-6022.

(7) DOJ will retain the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DOJ will credit the obligor's case for the full amount of collection and distribute the balance as provided in OAR 137-055-6022.

(8) Within each arrears type in the sequence of payment distribution in OAR 137-055-6022, 137-055-6023 or 137-055-6024, DOJ will apply the support payment to the oldest debt in each arrears type.

(9) Any excess funds remaining after arrears are paid in full will be processed as provided in OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support as provided in section (10) of this rule.

(10) DOJ will distribute support payments representing future support on a monthly basis when each such payment actually becomes due in the future. No amounts may be applied to future months unless current support and all arrears have been paid in full.

Stat. Auth.: ORS 25.020, 25.610 & 180.345
Stats. Implemented: ORS 18.645, 25.020 & 25.610
Hist.: DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6025
Distribution of Support Payments to Private Collection Agencies

(1) For purposes of this rule, the following definitions apply:

(a) "Collection agency" means a collection agency as defined by ORS 697.005;

(b) "Enforcement action" means any action taken by a collection agency to ensure payment of support by an obligor, including but not limited to contact for the purposes of discussing payments by the collection agency in person or through mail, e-mail or telephone with the obligor, members of the obligor's household or the obligor's employer. "Enforcement action" does not mean investigative and locate services provided by a collection agency.

(c) "Legally entitled to" means support payments which the Division of Child Support (DCS) is required to distribute to the obligee pursuant to OAR 137-055-6020, but does not include support payments that DCS is required to distribute to the child attending school pursuant to ORS 107.108 and OAR 137-055-5110.

(2) When the Oregon Child Support Program (CSP) is notified by a collection agency or an obligee that the obligee has entered into an agreement with a collection agency, the administrator will send to the obligee an authorization form developed pursuant to section (7) of this rule.

(3) Before DCS may adjust the payment records and begin forwarding support payments to the collection agency pursuant to section (4) of this rule, the obligee must submit a signed and notarized authorization form to the CSP with the following information:

(a) The child support case number;

(b) The obligee's and obligor's full names;

(c) The names of the children on the child support case for whom the obligee is entitled to receive support; and

(d) The name and address of the collection agency to which payments should be sent.

(4) Upon receipt of a completed authorization form DCS will:

(a) Adjust the child support case record for disbursement of support payments to the collection agency. If support payments are currently being disbursed to a different collection agency, DCS will adjust the child support case record for disbursement of support payments to the collection agency for which the obligee has most recently provided authorization;

(b) Send the notice developed pursuant to subsection (7)(b) of this rule to the other parties;

(c) Credit the obligor's account for the full amount of each support payment received by DCS; and

(d) Disburse support payments received, to which the obligee is legally entitled, to the collection agency.

(5)(a) DCS may stop disbursing support payments to a collection agency and reinstate disbursements to the obligee if:

(A) The obligee notifies the CSP that the agreement with the collection agency has been terminated;

(B) The obligee requests that the CSP stop disbursing support payments to the collection agency;

(C) The administrator is made aware that the collection agency is not in compliance with the provisions of section (8) of this rule; or

(D) The Department of Consumer and Business Services (DCBS) notifies the Department of Justice that the collection agency is in violation of its rules.

(b) DCS will stop disbursing child support payments to the collection agency only after the child support case record has been adjusted following the date that notification from the obligee was received or the date the administrator is otherwise made aware that the collection agency is not in compliance with section (8) of this rule or rules adopted by DCBS. DCS will, at no time, be responsible for returning support payments to the obligee that were disbursed to the collection agency prior to the child support case record having been adjusted following the date that notification from the obligee was received.

(6) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(7) The CSP will develop:

(a) An authorization form to be sent to an obligee when the obligee or the collection agency notifies CSP that the obligee has entered into an agreement with a collection agency. The form will include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the CSP without paying the interest or fee that is typically charged by a collection agency; and

(b) A form to be sent to the other parties to the case when DCS has been given authorization by the obligee to disburse support payments to a collection agency.

(8) A collection agency to which the obligee has provided authorization for DCS to disburse support payments:

(a) May only provide investigative and locate services to the obligee unless written authorization is received from the administrator as provided in section (9) of this rule;

(b) May disclose relevant information from services provided under subsection (a) of this section to the administrator for purposes of providing support enforcement services under ORS 25.080;

(c) May not charge interest or a fee for services exceeding 29 percent of each support payment received by the collection agency to which the obligee is legally entitled unless the collection agency, if allowed by the terms of the agreement between the collection agency and the obligee, hires an attorney to perform legal services on behalf of the obligee;

(d) Will include in the agreement with the obligee a notice that provides information on the fees, penalties, termination and duration of the agreement; and

(e) Will report in writing to DCS the full amount of any payment collected as a result of an enforcement action taken within ten days of disbursing the payment to the obligee.

(9) Upon request, the administrator may provide written authorization to the collection agency to initiate enforcement action to collect the support award. The authorization may:

(a) Authorize a specific enforcement action only; or

(b) Authorize any enforcement action until further notice from the administrator.

(10) A power of attorney given to a collection agency by an obligee does not change the rights and responsibilities of the parties or a collection agency as described in ORS 25.020 or this rule.

(11) The administrator will not disclose any information from a child support record to a collection agency except as permitted in OAR 137-055-1140.

Stat. Auth.: ORS 25.020; 180.345
Stats. Implemented: ORS 25.020
Hist.: AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6025; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6025; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6040
Right to Hearing to Contest Amount of Assigned Support

(1) A party who wants to contest the amount of support that the Division of Child Support (DCS) claims is assigned to the state on the party's child support case may do so by filing a written objection with DCS.

(2) Upon receiving a written objection, DCS will conduct an administrative review of the case to verify the correct amount of support claimed as assigned and will make any necessary corrections or adjustments to this amount as determined in the review.

(a) DCS will complete its review and make a determination within 45 days from the date of receiving the written objection.

(b) DCS will notify the parties, in writing, of this determination and of the right to contest the determination before an administrative law judge. The party must request such hearing in writing within 30 days of the date that DCS sends the written notice of its determination.

(3) Prior to any such hearing:

(a) DCS may contact or meet with the party to explain how DCS has computed the amount of support assigned to the state on the party's case.

(b) The party may withdraw their request for a hearing by notifying DCS in writing.

(4) Once a determination has been made, DCS will not conduct further review of the amount of arrears that DCS reports as assigned to the state unless:

(a) DCS has made an accounting adjustment to the amount that DCS reports as assigned to the state, and a party then files a written objection to this adjusted amount; or

(b) The assistance status of the family has changed since the date of the last administrative review conducted under this rule, and a party then files a written objection.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020
Hist.: AFS 27-2000, f. & cert. ef. 11-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0250; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6040; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6200
Adjusting Case Arrears When an Error is Identified

The purpose of this rule is to set out what the administrator will do when an error is identified which requires adjusting the arrears of a case.

(1) "Complete payment record" means that the Division of Child Support (DCS) has kept the payment record for the support judgment from the date of the first support payment required under the judgment, or the obligee or the administrator established arrears for the time period when DCS did not keep the payment record on the case.

(2) A notice will only be sent as provided for in this rule when the amount of arrears to be adjusted is at least $5.

(3) If the error occurred within the current billing cycle, the administrator will adjust the arrears on the case record.

(4) If DCS has a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, the administrator will adjust the arrears on the case record and send a notice to the parties advising of the change in the case arrears.

(5) If DCS does not have a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, but within the previous 180 days, the administrator will:

(a) Send a notice to the parties that the administrator will adjust the arrears on the case record as indicated in the notice if none of the parties object within a 30-day period following the date of the notice;

(b) If none of the parties object within 30 days of the notice, the administrator will adjust the arrears on the case record as indicated in the notice;

(c) If any party objects within 30 days of the notice, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(6) If DCS does not have a complete payment record for the support payment judgment and the error occurred over 180 days ago, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(7) Notwithstanding any other provision of this rule, if under a contingency order the error is due to a failure to accurately reflect on the case record the periods of residence of the child in state care, the administrator will adjust the arrears on the case record and notify the obligor unless the Department of Human Services or Oregon Youth Authority directs otherwise.

(8) On a closed case:

(a) If all the arrears to be added to the case are assigned to the state, the administrator will not open the case if it is for a period of less than four months of accrual or less than $500;

(b) If all the arrears to be added to the case are assigned to the state and the arrears are for a period of a least four months or $500, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(c) If any of the arrears to be added to the case are owed to the obligee, the administrator will send a notice to the obligee and, if the arrears are for at least $25, ask if the obligee wants enforcement of the arrears. If the obligee requests enforcement, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(d) If any of the arrears to be added to the case are owed to an adult child as defined in OAR 137-055-5110, the administrator will send a notice to the adult child but will not open the case until the adult child qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110.

(e) Except as otherwise provided in OAR 137-055-6110, if the error was due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will return the excess amount to the obligor if the amount is at least $5 and pursue an overpayment as appropriate; or

(f) If the error was not due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will send an informational notice to the parties.

(9) Notwithstanding section (5) or section (8), on any case in which the applicant for services has requested non-enforcement and the error only affects the amount of arrears owed to the obligee, the administrator will update the case record appropriately.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020
Hist.: DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6210
Advance Payments of Child Support

(1) "Advance payment" means:

(a) The Department of Justice (DOJ) has transmitted money to an obligee or to a person or entity authorized to receive support payments;

(b) The amount does not exceed the total arrears available for assignment to the state;

(c)(A) DOJ has applied the money incorrectly through no fault or error of the payee; or

(B) The amount transmitted by DOJ is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(d) The payment is not the result of a dishonored check.

(2) The person who receives an advance payment owes the amount of the advance payment to DOJ.

(3) Instead of directly collecting the amount of the advance payment from the person who received it, the amount will be removed from the arrears owed to the payee and will be assigned to the state as permanently-assigned arrears under OAR 137-055-6020. DOJ will notify the payee in writing of the:

(a) Amount to be collected as permanently-assigned arrears;

(b) Right to object and request an administrative review.

(4) When an objection is received, DOJ will conduct an administrative review and notify the payee in writing of the:

(a) Determination resulting from the review; and

(b) Right to challenge the determination by judicial review under ORS 183.484.

(5) Notwithstanding the provisions of section (3) of this rule, designation of permanently-assigned arrears to recover advance payments does not affect whether a case is assigned to DOJ as provided in OAR 137-055-2020 or a district attorney office as provided in OAR 137-055-2040.

(6) For the purposes of this rule, a “dishonored check” is not one which has been paid or made negotiable.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.020
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6220
Recovery of Overpayments on Support Accounts

(1) A child support overpayment in favor of the State of Oregon is created when:

(a) The Department of Justice (DOJ) has transmitted money to an obligee, to a person or entity authorized to receive support payments or to an obligor, and that amount:

(A) Was transmitted in error or is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(B) Does not qualify as an advance payment under OAR 137-055-6210 or as payment for future support under OAR 137-055-6021(10); or

(b) DOJ receives a check from an obligor, other payor on behalf of the obligor, or withholder, transmits the appropriate amount from that check to the payee, and that check is dishonored.

(2) For overpayments described in subsection (1)(a), sections (3) through (8) of this rule apply. For overpayments described in subsection (1)(b), sections (9) through (12) of this rule apply.

(3) DOJ will determine a threshold amount for which attempts to recover the overpayment will occur. In determining the threshold, DOJ will consider the cost of:

(a) Staff time in processing the overpayment collection request; and

(b) An administrative hearing and the average number of cases requesting a hearing.

(4) When a notice is issued under ORS 25.125 to a person or entity described in subsection (1)(a), DOJ will include a statement that the person or entity:

(a) Must respond within 14 days from the date of the notice to object and request an administrative review; and

(b) If appropriate, may voluntarily assign any future support to repay the overpayment.

(5) If the person or entity described in subsection (1)(a) requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the person or entity of the results of the review.

(6) Notice of the results of the administrative review will include a statement that the person or entity described in subsection (1)(a) must respond within 14 days from the date of the notice to object and request an administrative hearing.

(7) If the person or entity described in subsection (1)(a) files a written objection or request for hearing within 14 days, an administrative law judge shall then hear the objection.

(a) An order by an administrative law judge is final.

(b) The person or entity described in subsection (1)(a) may appeal the decision of an administrative law judge to the circuit court for a hearing de novo. The appeal shall be by a petition for review, filed within 60 days after the date that the final hearing order has been mailed.

(8) If a person or entity described in subsection (1)(a) fails to file a written request for administrative review, objection or request for hearing, fails to voluntarily assign future support, or if an order setting the overpayment amount is received from an administrative law judge, DOJ will refer the overpayment for collection as provided in ORS 293.231.

(9) When a notice is issued to an obligor or withholder under ORS 25.125(5), DOJ will include a statement that the obligor or withholder must respond within 14 days of the date of the notice and request an administrative review.

(10) If the obligor or withholder requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the obligor or withholder of the results of the review.

(11) The obligor or withholder may appeal the result of the administrative review as provided in ORS 183.484.

(12) If the obligor or withholder fails to request an administrative review or if the result of an administrative review is that an overpayment occurred, DOJ will refer the overpayment for collection from the obligor or withholder as provided in ORS 293.231.

Stat. Auth.: ORS 25.125, 180.345 & 293
Stats. Implemented: ORS 25.020 & 25.125
Hist.: AFS 23-1983(Temp), f. & ef. 5-18-83; AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0045; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0265; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6220; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6260
Return of Overcollected Support Amounts

(1) When the Division of Child Support (DCS) receives a support payment on an account for which no current order exists for ongoing support, DCS will apply the payment to any arrears the obligor may owe on the account. If any excess funds remain from the payment after any arrears are paid in full, and DCS has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor within 30 days of discovering the overcollection.

(2) On any account for which an ongoing support obligation exists, and DCS receives a payment that exceeds the total amount due for current support and arrears and has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor under the following circumstances:

(a) When an income withholding order exists and the withholder does not receive or implement a notice from the administrator to reduce withholding to the amount of the current ongoing support obligation in a timely manner, such as may occur after all arrears are collected or after the ongoing support obligation is modified downward;

(b) When a state or federal tax refund is intercepted in an amount exceeding the amount owed for arrears; or

(c) When TANF cash assistance is being granted to the obligee or children on the support case, unless the obligor and the administrator agree otherwise.

(3) When DCS receives a payment that exceeds the total amount due for current support and arrears and has forwarded the excess amount to the payee, DCS will notify the parties in writing within 30 days of discovering the overcollection that:

(a) A credit balance in the obligor’s favor has resulted from the overcollection; and

(b) The obligee or child attending school under ORS 107.108 and OAR 137-055-5110 may, within 14 days of the date of the notice from DCS, submit a written request to DCS for an administrative review to determine if DCS’s record-keeping and accounting related to calculation of the credit balance is correct.

(4) DCS will conduct the administrative review within 30 days of receiving the party’s written request, and will send written notification to the parties of the results of the review.

(5) In any case where DCS is required to return overcollected funds to an obligor under sections (1) and (2) of this rule, the obligor may elect to forego the return of some or all of the overcollected funds and to instead use any credit balance amount thus established under this rule to offset the obligor’s future ongoing support obligation. An obligor wishing to elect this option must notify DCS in writing before DCS has returned such funds to the obligor.

Stat. Auth.: ORS 25.020, 25.125, 180.345
Stats. Implemented: ORS 25.020 & 25.125
Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0272; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6260; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6260; DOJ 1-2006, f & cert. ef. 1-3-06

137-055-6280
Refund of Improper Tax Refund Collection

(1) Whenever a federal or Oregon tax refund owed to a support obligor has been withheld to pay support arrears and that withholding was made in error or overcollects the amount owed, the Division of Child Support (DCS) shall refund the amount withheld in error or overcollected.

(2) DCS may authorize the amount withheld, or any part thereof, to be refunded to the obligor by means of an advance payment from its administrative account. Such advance payment shall be made:

(a) Immediately when the amount withheld by the taxing agency was improperly withheld as a result of an error by the administrator, and the obligor provides a copy of the notice that the tax refund was being withheld; or

(b) The child support arrears certified for purposes of tax refund intercept no longer exist or are less than the amount withheld from the tax refund; and

(c) Thirty (30) days have elapsed since the date of the notice to the obligor that the tax refund was being withheld and DCS has not received the obligor's tax refund from the taxing agency; and

(d) The obligor provides a copy of that notice to the administrator.

(3) When DCS has made an advance payment of a refund to the obligor it will, upon receipt of the tax refund from the taxing agency, retain that refund up to the amount refunded to the obligor to reimburse its administrative account.

(4) If the DCS has already forwarded to the payee, part or all of the amount withheld, DCS may establish an overpayment against the payee for that amount, not to exceed the amount refunded to the obligor, pursuant to OAR 137-055-6220.

Stat. Auth.: ORS 25.020, 25.610, 25.625, 180.345
Stats. Implemented: ORS 25.020, 25.610, 25.620 & 25.625
Hist.: AFS 35-1982(Temp), f. & ef. 4-27-82; AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0030; AFS 26-1994, f. & cert. ef. 11-3-94; AFS 7-1997, f. & cert. ef. 6-13-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0220; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6280; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6280; DOJ 1-2006, f & cert. ef. 1-3-06

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Rule Caption: Removes conclusive presumption from the establishment of paternity under ORS chapter 109 and 416.
Adm. Order No.: DOJ 2-2006(Temp)
Filed with Sec. of State: 1-3-2006
Certified to be Effective: 1-3-06 thru 6-30-06
Notice Publication Date:
Rules Amended: 137-055-2160, 137-055-3020, 137-055-3060, 137-055-3140
Subject: The changes to OAR 137-055-2160; 137-055-3020; 137-055-3060; 137-055-3140 implement the changes to state law from Senate Bill 234 which amended the paternity laws.
Rules Coordinator: Shawn Brenizer—(503) 986-6240

137-055-2160
Requests for Hearing

(1) A request for hearing must be in writing and signed by the party, the party's authorized representative, or the administrator.

(2) A request for hearing may be made on a form provided by the Child Support Program and must contain the party's residence, mailing or contact address, a telephone number where the party can be contacted and the reasons for objection to the contested case notice.

(3) A request for hearing must be received by the CSP office which issued the action within the time provided by law.

(4) A new or amended request for hearing is not required if the administrator amends the order appealed from.

(5) When a party requests a hearing after the time specified by the administrator, the administrator shall handle the request pursuant to OAR 137-003-0528, except that the administrator may accept the late request only if:

(a) The request is received before or within 60 days after entry of a final order by default;

(b) The circuit court has not approved the final order or there is no appeal of the final order pending with the circuit court, and

(c) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or Oregon Child Support Program administrative rules provide a different time frame or standard.

(6) Notwithstanding the provisions of section (5) of this rule, a request for hearing is not considered a late hearing request when:

(a) Parentage testing has been conducted pursuant to OAR 137-055-3020(7)(b) which includes the man as the biological father of the child; and

(b) A request for hearing has been received from a party within 14 days from the date of service of the Notice of Intent to Enter Order/Judgment and the notice of parentage testing results.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 180.345
Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0830; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2160; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06

137-055-3020
Paternity Establishment Procedures

For purposes of this rule, the following definition applies:

(1) "Marital Presumption" means the presumption in ORS 109.070 that a man married to a mother of a child at the time of conception or at the time of birth of a child is the biological father of the child.

(2) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.

(3)(a) In all cases in which a child was conceived in Oregon, the administrator will initiate legal proceedings to establish paternity under ORS chapter 109 or 416.

(b) Except for proceedings filed under ORS Chapter 109, past support will be established as provided by ORS Chapter 416 and OAR 137-055-3220.

(4) When the administrator initiates legal action to establish paternity, if the child was born in this state, the administrator will file the Notification of Filing of Petition in Filiation Proceedings with the Center for Health Statistics.

(5) In applying the marital presumption of paternity, the administrator will follow the law in effect at the time the child was born.

(6) The administrator will handle disputes to the presumption of paternity under ORS 109.070 in the following manner:

(a) For children born before January 1, 2006, where paternity was established by conclusive presumption, the administrator will provide notice to the parties that:

(A) The parties have the right to challenge paternity under ORS 109.070 by filing a petition in the circuit court;

(B) The administrator will delay any initiated support action for 30 days;

(C) If a party provides proof within 30 days that he/she filed a petition, the administrator will suspend the support action pending the outcome of the court's decision.

(b) For children born at any time where paternity was established by disputable presumption, the administrator will seek to establish paternity against the man named by the mother to be the most likely alleged father except as provided in sections (7) and (8).

(7) If the husband and mother are still married, the husband is on the child's birth record:

(a) If only one party disputes paternity, the administrator will give notice to the parties as provided in section (6)(a) and proceed with the legal action to establish support if no petition is filed within 30 days.

(b) If both the husband and mother dispute the child's paternity, the administrator will order the husband, mother and child to appear for parentage testing.

(8) If the husband and mother are still married, no father is listed on the birth record, and the mother names another man as the father of the child, the administrator will provide notice and an opportunity to object to the husband.

(a) If an objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the husband.

(b) If no objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the most likely alleged father named in the mother's paternity affidavit.

(9) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have excluded a man as the father of the child, the following provisions apply:

(a) If there is only one remaining untested possible biological father, that man is constructively included as the father by virtue of the other man's exclusion as the father.

(b) If there are more than one remaining untested possible biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain parentage tests which either exclude or include the man.

(10) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested possible father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

(11)(a) The Child Support Program may initially pay the costs of parentage tests, and will seek reimbursement of those costs, but may agree to waive the costs.

(b) If an alleged father fails to appear as ordered for parentage tests, but the mother and child have appeared, reimbursement will be sought from the alleged father for the costs incurred.

(c) The maximum amount allowed to be entered as a parentage test judgment against a party is the amount the Child Support Program agrees to pay a parentage testing laboratory used to perform the tests.

(d) A judgment for parentage test costs reimbursement will not be sought:

(A) Against a person who has been excluded as a possible father of a subject child;

(B) If the mother stated that more than one man could be the father of the child, and has been unable to name a most likely alleged father, and the man tested has not objected to the entry of an order establishing paternity; or

(C) If the alleged father has applied for services under ORS 25.080 and requested paternity establishment in accordance with OAR 137-055-3080.

(12) A judgment for parentage test costs reimbursement will not be sought against any person found to be the legal father for costs attributable to testing other alleged fathers in any case in which the mother stated that more than one man could be the father of the child.

(13) When a party requests additional parentage testing as provided in ORS 109.252(2), the following provisions apply:

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Department of Human Services; and

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.

(14) Upon receipt of a party's request for additional parentage testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court will order additional testing.

(15) If a non-requesting party fails to appear for the additional parentage testing, the administrator will take appropriate steps to compel obedience to the order for additional testing.

(16) If a requesting party fails to appear for the additional parentage testing, the administrator may enter an order in accordance with OAR 137-055-3100.

(17) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 416.430
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1020; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3020; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06

137-055-3060
Regarding the Initiation of Action Under ORS 416.400 to 416.470 to Establish Paternity When More than One Possible Father Has Been Named

(1) In any action to establish paternity initiated under ORS 416.400 to 416.470, when the mother of the child for whom paternity is being established states that the father of the child could be more than one man, the administrator may initiate action against those men who are named by the mother as possible fathers as provided for in this rule.

(2)(a) If mother is able to name one of the possible fathers as the most likely father based upon the date of conception, the physical characteristics the child shares with that man, or other factors, the administrator may initiate action against that man only.

(b) If the administrator is unable to locate the man identified by mother as the most likely father, the administrator will not proceed with establishment of paternity until the man is located.

(3) If mother cannot identify one of the men who may be the father as the most likely father, the administrator may gather additional information, including information from the mother and from any physician or other licensed health care provider of obstetrical care to mother, which may assist the mother in identifying the most likely father.

(4) If mother remains unable to identify one of the possible fathers as the most likely father, the administrator may initiate legal action against any one or more possible fathers, as named by the mother, upon whom the administrator can apparently effect personal service based on the information it has available.

(5) The administrator will provide notice to any possible father described in this rule and served in an action to establish paternity that the mother of the child for whom the administrator seeks to establish paternity has named another man or men as a possible father unless that other man (or men) has been excluded by parentage tests.

(6) The administrator will enter no order establishing paternity with respect to a man who has not been named by mother as the most likely father unless the provisions of either subsection (a) or (b) of this section apply.

(a) The man has been subjected to parentage tests which have not excluded him as a possible father of the child in question; or,

(b) All other men named by mother as possible fathers have been excluded as possible fathers by parentage tests.

(7) Notwithstanding any other provision of this rule, its requirements do not apply when there is conclusive presumption of paternity pursuant to ORS 109.070 for a child born prior to January 1, 2006, or when one of the possible fathers is entitled to reasonable notice under ORS 109.096.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 416.400 - 416.470
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1040; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3060; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06

137-055-3140
Reopening of Paternity Cases

(1) When a party claims that a man established as the father of a child in fact is not the biological father of the child, the administrator will open or reopen the issue of paternity when all of the provisions of subsection (a) through (f) apply:

(a) The administrator initiated the action administratively which established paternity or paternity was established by a signed voluntary acknowledgment in Oregon;

(b) Parentage tests have not been conducted;

(c) The order was entered with the circuit court one year ago or less, or the voluntary acknowledgment as described in ORS 432.287 was filed with the Center for Health Statistics one year ago or less;

(d) Neither party asserts that the conclusive presumption of paternity created by ORS 109.070 applies for a child born prior to January 1, 2006;

(e) The party applying has completed and returned to the administrator a request for reopening prior to expiration of the one year period;

(f) The administrator has jurisdiction over the parties.

(2) If at any point during the process, the administrator obtains information and verifies that the criteria in section (1)(a), (b), (d), (e) or (f) are no longer met, the administrator will make a determination and will send the affected parties written notification within 10 days of verifying the information.

(3) The party who requested parentage tests will reimburse the administrator for the costs incurred by the Child Support Program for such tests, unless the male party in question is excluded.

(4) An order establishing paternity will not be vacated, dismissed or set aside under this rule unless parentage tests exclude the male party in question as the father of the child, or a party fails to comply and the issue of paternity is resolved against that party. The administrator will not submit for the court's approval, any order granting relief which requires repayment to the debtor of money paid by that debtor under the order.

(5) When the administrator initiates a reopening of paternity based on a request from a party, if the reopening results in an order of nonpaternity, the administrator will satisfy any state debt owing on the case and file credit arrears owed to any other party.

(6) Any judgment of nonpaternity under this rule will be by circuit court order.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 416.443
Hist.: AFS 29-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1000; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3140; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06

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Rule Caption: Rule amended to increase raffle prize cap from $50,000 to $75,000.
Adm. Order No.: DOJ 3-2006
Filed with Sec. of State: 1-4-2006
Certified to be Effective: 1-4-06
Notice Publication Date: 12-1-05
Rules Amended: 137-025-0300
Subject: OAR 137-025-0300 currently caps the retail value for non-cash raffle prizes at $50,000 per prize. The amendment increases this amount to $75,000.
Rules Coordinator: Carol Riches—(503) 947-4700

137-025-0300
Raffle Prize Limits

(1) The total cash prize(s) offered or awarded in a raffle shall not exceed $2,500.

(2) No prize shall be offered or awarded with a retail market value in excess of $75,000 and the cumulative retail value of all prizes offered or awarded at a raffle shall not exceed $100,000.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 3-2006, f. & cert. ef. 1-4-06

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

Rule Caption: Adopting amendments Mid-Cycle to the 2004 Oregon Fire Code.
Adm. Order No.: OSFM 1-2006(Temp)
Filed with Sec. of State: 1-9-2006
Certified to be Effective: 2-1-06 thru 7-28-06
Notice Publication Date:
Rules Adopted: 837-040-0020
Rules Amended: 837-040-0001, 837-040-0010, 837-040-0140
Subject: This rule adjusts current code thresholds for requiring fire sprinkler systems in parking garages, piers and wharves, updates the adopted standards for sprinkler system installations, correlates certain fire, life-safety provisions within the code, changes certain exit hardware requirements. This rule will also correlate with the Oregon Structural Specialty Code.
Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-040-0001
Scope

(1) The **International Fire Code** and the Oregon amendments represent a total scope of regulation.

(2) None of the individual chapters in the International Fire Code and Oregon amendments are stand alone requirements.

(3) The provisions of these chapters are not retroactive for existing facilities unless the chief determines that the condition presents a distinct hazard to life or property.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476.030
Stats. Implemented: ORS 476.030
Hist.: FM 6-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06

837-040-0010
Adoption of the International Fire Code

(1) The **2003 edition of the International Fire Code** as promulgated by the International Code Council is hereby adopted as the Oregon Fire Code, 2004 edition, subject to the exclusions there from and amendments thereto as hereafter set forth in these regulations.

(2) The Oregon Fire Code is generally adopted every three years coinciding with the publication of a nationally recognized fire code.

[Publications: Publications referenced are available from the agency.]
Stat. Auth: ORS 476.030
Stats. Implemented: ORS 476.030
Hist.: FM 3-1986, f. & ef. 3-11-86; FM 5-1986 (corrects FM 3-1986), f. & ef. 4-30-86 & Renumbered from 837-040-0005, Sec. (3) Uniform Fire Code; FM 3-1989, f. 6-30-89, cert. ef. 7-1-89; FM 6-1990, f. & cert. ef. 9-13-90; F)M 6-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1996, f. 1-22-96, cert. ef. 4-1-96; OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 3-1998, f. & cert. ef. 9-30-98; OSFM 4-1999, f. 12-29-99, cert. ef. 1-1-00; OSFM 3-2000, f. 4-1-00, cert. ef. 5-1-00; OSFM 13-2000, f. 10-3-00, cert. ef. 11-1-00; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 8-2004(Temp), f. 12-29-04, cert. ef. 1-3-05 thru 6-30-05; OSFM 11-2005, f. & cert. ef. 6-27-05; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06

837-040-0020
Amendments to the Oregon Fire Code

(1) The Office of State Fire Marshal amends the Oregon Fire Code approximately midway between publications of the International Fire Code based on proposed code amendments submitted for consideration by interested persons.

(2) Any time between publications of the International Fire Code, The Office of State Fire Marshal may initiate and adopt code amendments to the Oregon Fire Code, as circumstance merits.

(3) Effective February 1, 2006, by temporary rule, the following sections of the 2004 Oregon Fire Code are amended by the Office of State Fire Marshal as follows:

(a) Add to Section 202, the reference section for the definition of a Pier and Wharf.

(b) Delete the Oregon amendment in Section 304.3.1 and return to model code language.

(c) Add to Section 902.1, the definitions for Pier and Wharf.

(d) Amend Section 903.2.9 to require sprinklers in S-2 occupancies if the fire area exceeds 12,000 square feet or if the S-2 is an enclosed garage and located beneath other occupancy groups.

(e) Amend Section 903.2.10.4, sprinkler requirements for piers and wharves.

(f) Amend Section 1008.1.8.6 to require an approved sprinkler system or a smoke detection system but not both for delayed egress.

(g) Amend Section 1008.1.9 by changing the occupant load from 100 to 50.

(h) Adopt Section 3301.2 except for the words "and regulated in accordance with this section".

(i) Amend Chapter 45, NFPA 13, 13D and 13R standards to reference the 2002 edition.

(j) Amend Chapter 45, NFPA 58 standard to reference the 2004 edition.

(k) Add to Chapter 45 a reference to NFPA 307, 2006 edition.

(l) Delete the 70' diameter cul-de-sac and the 60' hammerhead figures in Appendix D, Table D103.1

[Publications: Publications referenced are available for review at the agency.]
Stat. Auth: ORS 476.030,
Stats. Implemented: ORS 476.030
Hist.: OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06

837-040-0140
Adoption of the Oregon Structural Specialty Code and Oregon Mechanical Specialty Code.

The fire and life safety provisions of the **2004 edition of the Oregon Structural Specialty Code** and the **2004 edition of the Oregon Mechanical Specialty Code** is hereby adopted as a standard for the purpose of evaluation of existing buildings.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476.030
Stats. Implemented: ORS 476.030
Hist.: OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06

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Rule Caption: Reduce permit fees.
Adm. Order No.: OSFM 2-2006(Temp)
Filed with Sec. of State: 1-13-2006
Certified to be Effective: 2-13-06 thru 3-10-06
Notice Publication Date:
Rules Amended: 837-012-0625
Subject: These rule changes are necessary to downward adjust retail fireworks permit fees not ratified by the 2005 legislature. Previous temporary rules were filed regarding permit fees, but the permanent rule filing process has not been completed yet.
Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0625
Retail Permit Fees

(1) Permit fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the Permit Application.

(2) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the Permit Application until the check has cleared the bank.

(3) The permit fee for each Permit Application shall be $50.

(4) Permit fees are non-refundable and non-transferable.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 2-2006(Temp), f. & cert. ef. 2-13-06 thru 3-10-06

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Rule Caption: Reduce permit fees.
Adm. Order No.: OSFM 3-2006(Temp)
Filed with Sec. of State: 1-13-2006
Certified to be Effective: 2-13-06 thru 3-10-06
Notice Publication Date:
Rules Amended: 837-012-0750
Subject: These rule changes are necessary to downward adjust public display fireworks permit fees not ratified by the 2005 legislature. Previous temporary rules were filed regarding permit fees, but the permanent rule filing process has not been completed yet.
Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0750
Display Permit Application Fees

(1) Display Permit Application fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the Display Permit Application.

(2) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the Display Permit Application until the check has cleared the bank.

(3) The Display Permit Application fee for a Display Permit is $50.

(4) Display Permit Application fees are non-refundable and non-transferable.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 2-2005, f. & cert. ef. 2-15-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 2-2006(Temp), f. & cert. ef. 2-13-06 thru 3-10-06

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Department of Revenue
Chapter 150

Adm. Order No.: REV 3-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Adopted: 150-305.145(3), 150-305.145(4)(b), 150-OL 2005 Ch. 387
Rules Amended: 150-137.300(3), 150-137.302(7), 150-305.145, 150-305.230, 150-305.992, 150-314.280-(N), 150-314.280(3), 150-314.505-(A), 150-314.515, 150-314.650, 150-314.665(2)-(A), 150-314.752, 150-315.204-(A), 150-315.262, 150-316.099, 150-317.018, 150-317.097, 150-317.267-(B), 150-320.305
Rules Repealed: 150-305.145(3)-(B), 150-305.145(3)-(D), 150-305.145(3)-(E), 150-305.145(3)-(F), 150-305.145(3)-(G), 150-305.145(3)-(H), 150-305.230(1), 150-305.230(2), 150-315.234(8)
Rules Ren. & Amend: 150-305.145(3)-(A) to 150-305.145(4)(a), 150-305.145(3)-(C) to 150-305.145(4)(c), 150-314.415(6) to 150-314.415(7)
Subject: 150-2005 Oregon Laws, Chapter 387 is adopted pursuant to legislation authorizing the filing of composite returns by certain pass-through entities on behalf of nonresident owners and the requirement to withhold tax for certain owners.

150-137.300(3) (Criminal Fine and Assessment Account Transfers) and 150-137.302(7) (Criminal Fine and Assessment Public Safety Fund Distribution) are amended to allow for monthly rather than quarterly transfers of monies and to reflect legislative changes in the percentages of distributions.

150-305.145(1); 150-305.145(3); 150-305.145(4)(b); 150-305.145(3)-(B); 150-305.145(3)-(D); 150-305.145(3)-(E); 150-305.145(3)-(H); 150-305.145; 150-305.145(3)-(A); 150-305.145(3)-(C); 150-305.145(3)-(F); 150-305.145(3)-(G). ORS 305.145 authorizes the Department of Revenue to waive or cancel certain penalty or interest charges. The department is proposing adoption, amendment and repeal of various rules promulgated under ORS 305.145, including an explanation of when penalty may be waived on a finding of good and sufficient cause or for first-time offenses. Existing rules are renumbered to reflect changes in statute numbers and other rules are repealed because material is consolidated.

150-305.230 is amended to reflect changes made by 2005 Oregon Laws, Chapter 832 (SB 31), which authorizes the department to adopt rules relating to who may represent taxpayers before the department. Some material in 150-305.230(1) and 150-305.230(2) is transferred and these two rules are proposed for repeal.

150-305.992 is amended to clarify situations when a 100 percent penalty for failure to file tax returns for at least 3 consecutive years is not imposed.

150-314.280-(N); 150-314.280(3); 150-314.650 are amended to reflect legislative changes providing that income derived from multistate business activity is apportioned to Oregon by use of the sales factor, and to explain how certain taxpayers should complete a tax return to indicate use of the alternative apportionment factors allowed to certain taxpayers.

150-314.665(2)-(A) is amended to reflect a legislative change to apportionment and the "throwback rule" by providing that sales shipped from public warehouses, when specified criteria are met, are not considered Oregon sales.

150-314.505-(A) and 150-314.515 are amended to remove unnecessary references to obsolete forms no longer used to file estimated taxes and to remove duplicative language.

150-314.752 is amended to update the list of business tax credits that are available to shareholders of an S corporation by including the university venture development fund credit (SB 853) and the water transit vessel credit (SB 896).

150-315.204-(A) is amended to reflect legislative action that extended the credit to tax years beginning before January 1, 2017.

150-315.262 is amended to reflect legislative changes that connect Oregon's definition of "child" to the definition found in federal tax law for purposes of the working family child care tax credit.

150-316.099 is amended to reflect legislative action connecting Oregon to the federal definition of "qualifying child" for purposes of the disabled child tax credit, and to provide that other states' boards of education may certify a child's individualized education program.

150-317.018 is amended to update the history of the Oregon Corporation Excise Tax law tie to the Internal Revenue Code due to enactment of section 19, chapter 77, Oregon Laws 2003 and 2005 legislation (SB 31).

150-317.097 is amended to delete provisions that are more appropriately within the purview of Housing and Community Services and to include a reference to the series of rules adopted by Housing and Community Services under OAR Chap. 813, Div. 110.

150-317.267-(B) is amended to incorporate 2005 legislative changes (SB 31) to the Oregon dividend-received deduction available to corporations.

150-320.305 is amended to reflect 2005 legislative changes relating to the Statewide Transient Lodging tax.

150-315.234(8) is repealed as the statute authorizing the tax credit expired for tax years following 2001.

150-314.415(6) is amended and renumbered to reflect 2005 legislative changes relating to the department's authority to apportion refunds between spouses.

Rules Coordinator: Durinda Goodwin—(503) 947-2099

150-137.300(3)
Criminal Fine and Assessment Account Distribution

The department will transfer moneys available in the Criminal Fine and Assessment Account after final deposits into the account for the calendar month have been made by the Oregon Department of Revenue and Oregon Judicial Department.

(1) The department will transfer 67.43 percent of the moneys in the Criminal Fine and Assessment Account, reduced by the amount reported by the Department of Justice to the Department of Revenue under ORS 137.300(4), to the General Fund.

(2) The department will transfer 32.57 percent of the moneys in the Criminal Fine and Assessment Account to the Criminal Fine and Assessment Public Safety Fund.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100; 137.302
Stats. Implemented: ORS 137.302
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-137.302(7)
Criminal Fine and Assessment Public Safety Fund Distribution

The department will distribute moneys available in the Criminal Fine and Assessment Public Safety Fund on a monthly basis following a deposit made from the Criminal Fine and Assessment Account.

(1) Distribution to recipient agencies is made monthly based on the allocation of funds described in Oregon Laws 2003, chapter 699.

(2) After the debt service obligations described in ORS 137.302(5) are satisfied, if the remaining moneys in the Criminal Fine and Assessment Public Safety Fund are insufficient to pay for the monthly distributions to the remaining recipients, these distributions shall be reduced proportionally in sufficient amounts to accommodate the revenue shortfall.

(3) If the remaining moneys in the Criminal Fine and Assessment Public Safety Fund are more than sufficient to pay for the monthly distributions to the remaining recipients, any excess money would remain in the fund and be included in next month's distribution calculation.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100; 137.302
Stats. Implemented: ORS 137.302
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-305.145
How to Appeal When the Department Denies a Request for Waiver of Penalty or Interest

(1) Waivers in General. ORS 305.145 allows the department to reduce or cancel any part or all of the interest or penalties imposed by Oregon law in certain cases. If the taxpayer has requested that interest or penalty be waived and the department denies that request, the taxpayer may appeal the denial.

(2) Appealing a denial when the department exercised its discretionary authority. If the taxpayer agreed that the interest or penalties were lawfully imposed, but the department denied the taxpayer's request for a discretionary waiver of interest or penalties under ORS 305.145(3) or (4), the taxpayer may request a conference within 30 days of the date of the department's notice of denial. The request for conference must be filed with the department as described in OAR 150-305.265(5). If the conference results in a denial of the waiver request, that decision is final and may not be appealed to the Oregon Tax Court.

(3) Appeals based on the accuracy of penalty or interest charges. If a taxpayer believes the interest or penalties were incorrectly imposed or calculated, the taxpayer may request a conference with the department. The conference request must be filed as described in OAR 150-305.265(5), but without regard to the time limitation of 30 days. If the conference results in a denial, the taxpayer may appeal the decision to the Oregon Tax Court as provided by ORS 305.275.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.145
Hist.: RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-305.145(3)
Discretionary Waiver of Interest

(1) General Policy. The department does not generally waive interest because interest represents a charge for the use of money.

(2) When interest may be waived for good and sufficient cause.

(a) The department may waive interest charges if the department determines the taxpayer did not have the use of the money on which the interest is charged.

Example: The taxpayer mailed an Oregon tax payment to the Internal Revenue Service (IRS) by mistake. The IRS cashed the check and six months later sent the money back to the taxpayer as an overpayment. In the eighth month, the taxpayer mailed payment to the department. The department may waive interest for the six-month period the taxpayer did not have use of the money.

(b) The department will waive interest imposed for failure to pay state tax on or before the due date if the taxpayer:

(A) Files an Oregon tax return on or before the due date of the return, excluding extensions;

(B) Submits the Oregon tax return in the same transmission as a federal tax return, using a department-approved alternative to filing a paper return;

(C) Pays any federal tax shown as due on the transmitted federal return on or before the due date using an electronic form of payment such as a credit card, debit card, or electronic funds transfer (ACH Debit);

(D) Pays any tax shown as due on the Oregon return within 30 days of the date shown on the Notice of Assessment sent to the taxpayer; and

(E) Establishes to the department's satisfaction that failure to pay Oregon tax was due to a good faith, mistaken belief of the taxpayer that the state tax had been paid.

(F) The waiver of interest provided by this subsection applies only to interest otherwise imposed on unpaid tax and does not include interest imposed on the underpayment of estimated tax.

(3) When interest will not be waived. The department will not waive interest on a deficiency resulting from changes made to Oregon tax based on a Federal Revenue Agent's Report (RAR), regardless of the time lapse between completion of the RAR and the completion of the Oregon audit report. ORS 314.380 and 314.410 require a taxpayer to report to the department a change in the taxpayer's net income as defined under OAR 150-314.380(2) resulting from a RAR.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.145
Hist.: REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-305.145(4)(a)
Waiver of Penalty for Good and Sufficient Cause

(1) Waiver of Penalties. The department will consider all requests to waive all or part of any penalty assessed. Taxpayers who agree that penalty was lawfully imposed may request that the penalty be reduced or canceled. The request must be in writing and contain all the facts that explain the taxpayer's failure to file a return or pay the tax as required by law. The determination of the department will be based upon the facts in the individual case and whether "good and sufficient cause" exists for the taxpayer's failure to act. "Good and sufficient cause" means an extraordinary circumstance that is beyond the control of the taxpayer. Good and sufficient cause does not include inadvertence, financial hardship, oversight, or lack of knowledge. Situations that may be accepted by the department as good and sufficient cause for waiver of penalties include, but are not limited to delays caused by:

(a) Death or serious illness of the taxpayer or a member of the taxpayer's immediate family.

(b) Unavoidable and unforeseen absence of the taxpayer from the state prior to the due date of the return.

(c) The department mailing a notice to the taxpayer's last-known address which was not the taxpayer's current address if the notice was returned to the department and the taxpayer responded promptly when located.

(d) Destruction by fire, a natural disaster or other casualty of the taxpayer's home, place of business or records needed to prepare the returns.

(e) The taxpayer's reliance on incorrect advice from a professional the taxpayer could reasonably assume was knowledgeable and experienced in the tax involved if:

(A) The taxpayer's reliance on the advice caused the failure of the taxpayer to pay or file timely;

(B) The taxpayer supplied the individual with complete information connected with the advice given; and

(C) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with the erroneous advice.

(f) The taxpayer's inability to file the return or pay the tax even though the taxpayer used ordinary business care and prudence.

(g) The taxpayer's inability to obtain records necessary to determine the amount of tax due, for reasons beyond the taxpayer's control, such as theft of the records.

(h) A department employee provided erroneous written information to the taxpayer.

(2) The department may waive penalty that has been discharged in bankruptcy as mandated by federal bankruptcy law.

(3) Penalties will not be waived if the department determines the penalties are imposed due to the taxpayer's involvement in an "abusive tax shelter" as defined in ORS 314.402.

(4) If the taxpayer relied upon a professional to merely prepare a return on time, "good and sufficient cause" is not present; the taxpayer is required to file. Reliance on advice from an employee of the taxpayer is not "good and sufficient cause."

(5) A request for waiver of penalty will be considered timely filed if it is received any time within one year after the tax, penalty, and interest is paid in full. The department may require that the delinquent account be paid in full before any request is considered. The department must document its reasons for waiving any penalty.

(6) Taxpayers who believe penalty was imposed inaccurately may request relief as provided in OAR 150-305.145.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.145
Hist.: 9-74 as 150-305.145, Renumbered to 150-305.145(1); TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85, Renumbered from 150-305.145(1); RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 4-1988, f. 5-25-88, cert. ef. 6-1-88; Renumbered from 150-305.145(3)-(A), REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-305.145(4)(b)
Waiver of Penalty for First-Time Offenses

(1) The general policy of the department is to consider all requests to waive all or part of the penalty charges. Taxpayers may request that any penalty collected by the department be reduced or canceled. The request must contain all the facts explaining the reason for the taxpayer's failure to file a return or pay the tax as required by law. The determination of the department will be based upon the facts in the individual case.

(2) First-time offense. The department may waive any penalty imposed by Oregon law when the taxpayer has not had penalty imposed for a particular tax program in the past.

Example 1: Hank has always filed his personal income tax and corporate excise tax returns on time. This year, he did not file his personal income tax return by the due date. Upon written request, Hank will be granted a penalty waiver because Hank has not filed a personal income tax return late in the past.

Example 2: Assume the same facts as Example 1, except that in the following year

Hank files his personal income tax return on time, but Corporation A, of which Hank is the sole shareholder, files its corporation excise tax return late. Upon written request, the department will waive penalty because this was the first time the corporate excise tax return was filed late.

Example 3: Fred took all his tax information to a preparer in March to have his return prepared. Fred's tax preparer pointed out that Fred missed the January 31 due date for his timber tax return. Fred did not know of the earlier due date because he had never harvested timber before. Upon written request, the department will waive penalty on the timber return, because this is Fred's first late filing for timber tax.

Example 4: Wilma is a resident of Kentucky. She sold Oregon property she inherited from her parents. She included the gain from the sale on her Kentucky tax return, but did not know she had to file an Oregon tax return until Oregon notified her of her filing requirement. Upon her written request, penalty imposed on the late tax return will be waived because this was the first time Wilma filed late.

(3) The department will not waive penalty if:

(A) The penalty was imposed because the department determines a taxpayer maintained a frivolous position.

(B) The programs are closely related and, because a penalty was imposed in one program, the taxpayer should have known the same violation in the closely-related program would cause penalty to be imposed for that program as well.

Example 5: Joe's Smokes is required to file a Cigarette Tax return and an Other Tobacco Products (OTP) return. Joe's Smokes was late in filing the OTP return this quarter. The business has never been late in filing an OTP return in the past, however, they were previously late in filing a Cigarette Tax return and a late-filing penalty was imposed. Because these two programs are so closely related, the OTP penalty will not be waived by the department as a first-time offense because Joe's Smokes should have known a penalty would be imposed for filing late.

(C) The same taxpayer is the owner of more than one business and penalty has been imposed in one or more of the businesses owned by the taxpayer and the taxpayer is requesting a waiver for a business that has not had penalty imposed before. That taxpayer has had a penalty imposed in the past for a different business and the taxpayer should have known a penalty would be imposed.

Example 6: John has three different businesses, each a sole proprietorship, that are subject to Timber Taxes. In the past, John has prepared and filed his Timber Tax returns for all businesses timely. In 2005, John filed a return for one of the businesses late and a penalty was imposed but was later waived upon his request due to a first-time offense. In 2006, John filed a Timber Tax return for one of the other businesses late. The department will not waive the penalty because John should have known penalty is imposed for filing late.

(D) The taxpayer has been warned that a civil penalty will be imposed under Chapter 323 (Cigarette and Other Tobacco Products) if the taxpayer continues with its actions. The taxpayer continues with its actions and a civil penalty is imposed. The taxpayer knew or should have known a civil penalty would be imposed, thus, the warning issued was the result of the first offense; the penalty imposed was the result of the second offense.

Example 7: Smokin' Sam's Tobacco Shop was issued a penalty for failure to have invoices for tobacco products on site for inspection by the Department of Revenue. On August 1, the department performed an inspection and issued a warning to Smokin' Sam's Tobacco Shop that invoices needed to be available for inspection on the next visit. Two weeks later, a written warning was sent to Smokin' Sam's Tobacco Shop again warning of the requirement to have invoices available for review. On September 15, the department returned to Smokin' Sam's and found no invoices available for review. A penalty was assessed and notice sent to the taxpayer. This penalty will not be waived because this was not the first time that Smokin' Sam's Tobacco Shop did not have the information available for the department's review.

(4) A request for waiver of penalty will be considered timely filed if it is received any time within one year after the tax, penalty, and interest is paid in full. The department may require that the delinquent account be paid in full before the request is considered. The department must document its reasons for waiving any penalty. Taxpayers who believe the penalty was imposed inaccurately may request relief as provided in OAR 150-305.145.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.145
Hist.: REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-305.145(4)(c)
Penalty Waivers that Enhance the Long-term Effectiveness, Efficiency, or Administration of the Tax System

(1) Definitions. For purposes of this rule:

(a) "Failed to file" means the taxpayer has not filed a return by the due date of the return, including extensions.

(b) "Notice" means a Request to File Notice or a Notice of Determination and Assessment issued by the department.

(c) "Pays the tax" means the taxpayer has paid the tax, interest, and the balance of the penalty determined under this rule, or has successfully completed a department-approved plan for payment of such amounts.

(d) "Tax liability" means the tax shown on the return before withholding, estimated tax payments and other prepayments of tax. For corporations, the $10 minimum tax under ORS 317.090 is not considered a "tax liability."

(2) Waiver of 100 Percent Delinquent Return Penalty Imposed Under ORS 305.992. The department may waive all or part of the 100 percent penalty imposed under ORS 305.992 as follows:

(a) The department will waive 75 percent of the 100 percent penalty if:

(A) The taxpayer has not previously failed to file returns, files the delinquent return(s), and pays the tax without notice from the department; or

(B) The taxpayer files the return(s) and pays the tax in response to a department notice and a tax liability exists for only one tax year.

(b) The department will waive 65 percent of the 100 percent penalty if the taxpayer has not previously failed to file returns, files the delinquent returns, and pays the tax in response to a notice from the department.

(c) The department will waive 50 percent of the 100 penalty if the taxpayer has been assessed for failure to file one or more returns, and the taxpayer files the delinquent return(s) and pays the tax.

(3) Waiver Of 20 Percent Failure-To-File Penalty Imposed Under ORS 314.400.

(a) The department will waive all or part of the 20 percent failure-to-file penalty as follows:

(A) If the taxpayer has filed the return and paid the tax without written notice from the department and has not previously failed to file a return or to pay a tax timely, the department will waive the entire 20 percent penalty.

(B) If the taxpayer has filed the return and paid the tax, penalty and interest in full and has not previously failed to file a return or pay a tax timely, the department will waive one-half of the penalty if the return was filed in response to written notice from the department.

(b) No penalty imposed under ORS 314.400 will be waived if a Notice of Assessment has been mailed to the taxpayer, unless the taxpayer meets one of the criteria of OAR 150-305.145(4)(a) or 150-305.145(4)(b).

(4) Waiver of 20 Percent Substantial Understatement of Income Penalty Imposed under ORS 314.402.

(a) The department will waive the penalty if the taxpayer shows that there was reasonable cause for the understatement and that the taxpayer acted in good faith.

(b) Reasonable cause and good faith. A taxpayer's reasonable cause and good faith for a substantial understatement of income is demonstrated by the extent of the taxpayer's efforts to determine the taxpayer's correct tax liability under the law.

(A) The following circumstances demonstrate reasonable cause and good faith:

(i) The taxpayer relied on a position contained in a proposed federal regulation or state rule.

(ii) The taxpayer honestly misunderstood the facts or law affecting the understatement, and the misunderstanding was reasonable in light of the taxpayer's experience, knowledge and education.

(iii) The taxpayer or taxpayer's return preparer made a computational or transcriptional error in preparing the return.

(B) Generally, reliance on an information return, incorrect facts or advice of a professional does not demonstrate reasonable cause and good faith, unless under all the circumstances the taxpayer's reliance was reasonable. The following examples demonstrate reasonable cause and good faith:

Example 1: The taxpayer relied on erroneous information that was inadvertently included in the financial records of the taxpayer's business by others, if procedures existed that were designed to identify factual errors.

Example 2: The taxpayer relied on erroneous information reported on a Form 1099 provided by another person, if the taxpayer did not know or have reason to know that the information was incorrect.

(C) A taxpayer is considered to know or have reason to know that information is incorrect only if such information is inconsistent with other information reported to the taxpayer or is inconsistent with the taxpayer's knowledge of the underlying facts.

(5) Waiver of $500 False W-4 Statement Penalty Imposed under ORS 316.177. The department will waive the penalty if there was a "reasonable basis" for the statement as defined in OAR 150-316.177(2).

(6) Waiver of Frivolous Return Penalty Imposed Under ORS 316.992. The department will waive 50 percent of the $250 penalty if the taxpayer:

(a) Submits a timely written request for waiver as required in OAR 150-305.145(4)(a);

(b) Files a return for that same tax year that is not frivolous under ORS 316.992; and

(c) Pays all tax, interest, and the balance of the penalty determined under this rule, or has entered into and successfully completed a department-approved plan for payment of the amounts.

(7) Waiver for Taxpayers Affected by Unusual Events. The department may waive penalty for an affected group of taxpayers if the department determines that waiver is appropriate due to unusual circumstances including, but not limited to:

(a) Events that affect a large number individuals. Examples of such events include but are not limited to natural disasters, terrorist acts that occurred within the United States of America, or illegal activity by a tax or accounting professional.

(b) Mistaken belief that state tax had been paid. The department will waive penalty imposed for failure to pay state tax on or before the due date if the taxpayer:

(A) Files an Oregon tax return on or before the due date of the return, excluding extensions;

(B) Submits the Oregon tax return in the same transmission as a federal tax return, using a department-approved alternative to filing a paper return;

(C) Pays any federal tax shown as due on the transmitted federal return on or before the due date using an electronic form of payment such as a credit card, debit card, or electronic funds transfer (ACH Debit);

(D) Pays any tax shown as due on the Oregon return within 30 days of the date shown on the Notice of Assessment sent to the taxpayer; and

(E) Establishes to the department's satisfaction that failure to pay Oregon tax was due to a good faith, mistaken belief of the taxpayer that the state tax had been paid.

(8) A request for waiver of penalty will be considered timely filed if it is received any time within one year after the tax, penalty, and interest is paid in full. The department may require that the delinquent account be paid in full before the request is considered. The department must document its reasons for waiving any penalty. Taxpayers who believe the penalty was imposed inaccurately may request relief as provided in OAR 150-305.145.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.145
Hist.: RD 4-1988, f. 5-25-88, cert. ef. 6-1-88; RD 2-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; Renumbered from 150-305.145(3)-(C), REV 3-2005, f. 12-30-05, cert. ef 1-1-06

150-305.230
Representation of Taxpayers before the Department of Revenue

(1) Application of ORS 305.230. The provisions of ORS 305.230 apply to all administrative proceedings before the Department of Revenue. Only those individuals who qualify under ORS 305.230 and this rule may represent the taxpayer.

(2) Individuals Authorized to Represent by Department Rule. The following individuals may represent the taxpayer before the department unless the individual is prohibited from representing the taxpayer by other Oregon law:

(a) An adult immediate family member of the taxpayer may represent the taxpayer.

(b) A regular full-time employee of an individual employer may represent the employer.

(c) A general partner or a regular full-time employee of a partnership may represent the partnership. For general representation rules for partnerships see OAR 150-305.242(2) and 150-305.242(5).

(d) An officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(e) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(f) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(g) An individual may represent any individual or entity that is outside the United States before department personnel when such representation takes place outside the United States.

(h) An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or by rule) to sign the tax return, may represent the taxpayer during an examination of the tax year or period covered by that tax return. This provision does not permit such individuals to represent taxpayers, regardless of the circumstances, before conference officers, revenue agents, legal counsel or similar department employees.

(i) A taxpayer's authorized agent may represent the taxpayer in proceedings relating to the property tax assessment of designated utilities and companies by the Oregon Department of Revenue under ORS 308.505 through 308.665 and 308.805 through 308.820. For purposes of this rule, an "authorized agent" means a person who is authorized by a company assessed under ORS 308.505 to 308.665 and 308.805 to 308.820 to transact all business related to the filing or processing of an annual statement filed as required by ORS 308.525 or all business related to the filing of a request for a director's conference under ORS 308.595.

(j) Persons authorized to represent in an ad valorem property tax conference or proceeding under ORS 305.230(1)(d), any person licensed by the Oregon State Board of Tax Practitioners, and consulting foresters may represent a taxpayer in any proceeding with respect to taxes imposed under ORS Chapter 321. For purposes of this rule, "consulting forester" means a person who is engaged by the taxpayer to render expert or professional advice in forest management related matters.

(k) The director may, subject to restrictions imposed under other Oregon law, authorize an individual who is not otherwise eligible under this rule to represent a taxpayer before the department. The sole fact that an individual does not qualify under another section of this rule is not an adequate reason to request special permission to represent a taxpayer.

(3) The department, in its discretion, may revoke the authority to represent a taxpayer granted under section (2) of this rule.

(4) Representation by an Oregon Tax Matters Shareholder.

(a) When the treatment of S corporation items on a shareholder's return is consistent with the treatment of that item on the S corporation return and results in a deficiency, a tax matters shareholder may be designated to represent the corporation before the Department of Revenue in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(b) An S corporation that elects to designate a tax matters shareholder as its authorized representative in proceedings before the department for issues relating to the S corporation adjustments on a Notice of Deficiency must make the designation as provided in this rule.

(c) The tax matters shareholder designated for Oregon purposes may be the federal tax matters shareholder or may be another shareholder, and must be a shareholder who is:

(A) A shareholder in the S corporation at some time during the taxable year to which the Notice of Deficiency pertains; or

(B) A shareholder in the S corporation at the time the designation is made.

(d) Information required. The S corporation must designate a tax matters shareholder by filing a signed statement with the department. The statement must:

(A) Identify the shareholders making the designation by name, address, and social security number;

(B) Identify the S corporation and the designated shareholder by name, address, and taxpayer identification number;

(C) Declare that the statement is a designation of a tax matters shareholder for the taxable year to which the Notice of Deficiency relates; and

(D) Authorize the tax matters shareholder as a qualified representative under ORS 305.230 and identify the taxable year(s) of authorization. The S corporation may authorize the tax matters shareholder to represent the shareholders for issues other than S corporation issues only by making the election with this authorization.

(e) Only one tax matters shareholder may be designated and authorized to represent the corporation for each examination at the S corporation level which results in a Notice of Deficiency to the corporation or the shareholders for adjustments related to S corporation items.

(f) If a notice explaining the S corporation adjustments is mailed by the department to the tax matters shareholder with respect to any S corporation taxable year, the tax matters shareholder must supply the department with the name, address, ownership percentage and taxpayer identification number of each person who was a shareholder in the S corporation at any time during the taxable year, unless that information was provided in the S corporation return for that year.

(g) A timely request for a conference filed with the department by the tax matters shareholder will be considered as an appeal of the S corporation adjustment, and all issues regarding treatment of S corporation items will be resolved in a single conference.

(h) Shareholders who do not designate a tax matters shareholder as provided in this rule may appeal their Notice of Deficiency by following the administrative remedies under ORS 305.265 and the related rules.

(i) Binding Actions of the Tax Matters Shareholder. The tax matters shareholder for Oregon will bind all shareholders who have made the designation under this section to all actions of the tax matters shareholder with respect to the proceedings between the department and the shareholder whose tax liability is in dispute. When appealing on behalf of the S corporation, the tax matters shareholder may exercise any administrative remedy before the department allowed by Oregon law except that all electing shareholders are considered to have appealed under the same action. Any shareholder who has designated a tax matters shareholder may participate in any level of the administrative proceedings.

Example: Assume an S corporation with 10 shareholders has been examined and each shareholder receives a Notice of Deficiency. If 8 shareholders designate a tax matters shareholder, their appeal will be heard collectively. If the tax matters shareholder requests a conference, the conference decision will apply to all 8 shareholders (all 8 shareholders may participate). The other 2 shareholders may appeal their cases individually because they did not make the election to be represented by the tax matters shareholder.

(j) Other actions of the tax matters shareholder that are binding on the shareholders who have made the designation include, but are not limited to:

(A) Consent to the extension of the statute of limitations regarding S corporation items with respect to all electing shareholders.

(B) Making a settlement offer to the department.

(C) Acceptance of a closing agreement with the department.

(D) Consent to time and place of any appeals proceedings.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.230
Hist.: 12-31-88; RD 8-1983, f. 12-20-83, cert. ef. 12-31-83; RD 5-1986, f. & cert. ef. 12-31-86; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 3-2005, f. 12-30-05, cert. ef 1-1-06

150-305.992
Returns Not Filed for Three Consecutive Years; 100 Percent Penalty

(1) General requirements. The 100 percent penalty under ORS 305.992 may be imposed if:

(a) The taxpayer was required to file returns for each tax year of three or more consecutive years including returns for tax periods of less than 12 months; and

(b) All returns due during the three-year period are not filed by the due date (including extensions) of the return required for the third consecutive year. Assessments under ORS 305.265(10) are not returns for the purpose of the penalty under ORS 305.992.

Example 1: On July 1, 2008, Mary filed her Oregon individual income tax returns for 2004, 2005, and 2007. In 2006, Mary was a nonresident and had no Oregon source income. Mary was not required to file an Oregon return for each of three or more consecutive taxable years because she had no Oregon source income in 2006. The 100 percent penalty will not be imposed on the 2004, 2005, or 2007 returns.

Example 2: Assume the same facts as Example 1 except that Mary had income from Oregon sources in 2006 and was required to file a return for 2006 but did not. The requirement that tax returns for three consecutive years were not filed by the due date of the third consecutive year was met and the 100 percent penalty will be imposed on the 2004, 2005, 2006, and 2007 returns.

(2) Under authority granted in ORS 305.229, the department will not impose the 100 percent penalty under ORS 305.992 for returns filed or a Notice of Tax Determination and Assessment (NTDA) that have been assessed a lower failure-to-file penalty.

Example 3: Laurie did not file returns for tax years 2003, 2004, or 2005. In 2005, the department issued NTDAs for tax years 2003 and 2004. The 2003 and 2004 NTDAs reflect a 50 percent failure-to-file penalty under ORS 314.400. In 2006, the department issues a NTDA for tax year 2005. The 2005 NTDA reflects the 100 percent failure-to-file penalty under ORS 305.992. The department will not assess a 100 percent penalty for the NTDAs issued for tax years 2003 and 2004 because a penalty was previously imposed. Thus, the penalty would remain at 50 percent for tax years 2003 and 2004.

(3) Net tax liability. The penalty is 100 percent of the net tax liability determined for each taxable year. The net tax liability is the tax remaining after subtracting credits, withholding, and other prepayments from the tax required to be shown on the return. A net tax liability may be determined by the taxpayer, an assessment under ORS 305.265(10), an examination, or audit of a return by the department.

Example 4: On September 27, 2007, Jack filed Oregon income tax returns for 2005 and 2006. The 2006 return showed Oregon tax of $450, state withholding of $700 and a refund of $250. The 2005 return has a net tax liability of $325. Jack was required to file a return for 2004 but did not file a return. Because Jack did not file all returns due during the three-year period by the due date of the 2006 return, the penalty may be assessed on 100 percent of the net tax liability for 2005.

Example 5: Assume the same facts as in Example 4 except that upon examination, the department adjusted the refund claim for 2006 and asserted a deficiency. The penalty may be assessed on 100 percent of the net tax liability for taxable years 2005 and 2006.

Example 6: Assume the same facts as in Example 5 except that the department assessed a tax under ORS 305.265(10) for 2004. The penalty may be imposed on 100 percent of the net tax liability for each taxable year: 2004, 2005, and 2006.

Example 7: Assume the same facts as in Example 4 except that the department asserted a deficiency one year later for tax year 2006 as the result of an audit. The auditor recomputed Oregon tax to be $1,017. After application of withholding and refunds already received, the taxpayer owed an additional $567 of tax. The 100 percent penalty may be assessed on the net tax liability of $317 for tax year 2006 (the corrected tax of $1,017 less the $700 of withholding) and on the net tax liability of $325 for tax year 2005.

Example 8: Assume the same facts as in Example 4 except that Jack was granted a federal extension to file the 2006 return until October 15, 2007. The 100 percent penalty does not apply. The returns for 2005 and 2006 were filed before the due date of the return required for the third year (October 15, 2007).

(4) Timber tax returns. Timber tax returns are those required to be filed under ORS 321.045 and 321.733 (2003) and 321.322 and 321.435 (2001). A timber tax return is required to be filed if a taxpayer:

(a) Harvested timber; or

(b) Obtained a Notification of Operations (permit) indicating the taxpayer would harvest. Obtaining a permit will cause the department to generate returns. There does not need to be a harvest to meet the filing qualification because non-harvests require a "NO HARVEST" filing.

Example 9: A taxpayer was required to file returns for 2003, 2004 and 2005 after harvesting timber in each of those years. If all three returns are not filed by January 31, 2006, the 100 percent penalty may be applied to any net tax liability for each of the three years.

Example 10: In 2003 and 2004 a taxpayer obtained permits to harvest; no harvest occurred for either year and the taxpayer did not file returns. In 2005 the taxpayer did not obtain a permit, but harvested timber. If a return is not filed by January 31, 2006, the 100 percent penalty may be applied to the 2005 net tax liability.

(5) Oregon withholding tax payment due dates are determined by the corresponding federal due dates. Generally, withholding tax reports are filed for four quarters per year. The 100 percent penalty will apply if the taxpayer failed to file 12 consecutive quarters representing three consecutive years.

Example 11: After February 1, 2006, an employer filed withholding tax reports for first through fourth quarter 2005, first through fourth quarter 2004 and first through fourth quarter 2003. The taxpayer is subject to the 100 percent penalty on all of the late reports.

Example 12: On May 30, 2007, an employer files withholding tax reports for first quarter 2007, fourth quarter 2006, and second quarter 2005. All other quarters have been filed timely. The 100 percent penalty is not assessed because the taxpayer was not delinquent for 12 consecutive quarters (three years).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.992
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 3-2005, f. 12-30-05, cert. ef 1-1-06

150-314.280-(N)
Modified Factors for Financial Organizations

(1) This rule is based on a model regulation adopted by the Multistate Tax Commission to promote uniform treatment of this item by the states. A financial organization having income from business activity that is taxable both within and without this state must allocate and apportion its net income as provided in this rule for tax years beginning on or after January 1, 1993. All items of nonbusiness income (income that is not includable in the apportionable tax base) must be allocated pursuant to the provisions of ORS 314.610 through 314.645 and the rules thereunder. A financial organization organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the Federal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, must allocate and apportion its net income as provided in this rule. The apportionment formulas provided in section (2) of this rule are also discussed in OAR 150-314.650.

(2)(a) For tax years beginning on or after January 1, 1991, and before May 1, 2003, all business income must be apportioned to this state by multiplying the income by a fraction. The numerator of the fraction is two times the receipts factor, as described in section (4) of this rule, plus the property factor, as described in section (5) of this rule, plus the payroll factor, as described in section (6) of this rule.The denominator of the fraction is four. If one of the factors is missing, the remaining factors are added and the sum is divided by three (divided by two if the missing factor is the receipts factor). A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(b) For tax years beginning on or after May 1, 2003, and before July 1, 2005, all business income must be apportioned to this state by multiplying the income by a multiplier equal to 80 percent of the receipts factor described in section (4) of this rule, plus 10 percent of the property factor described in section (5) of this rule, plus 10 percent of the payroll factor described in section (6) of this rule.

(c) For tax years beginning on or after July 1, 2005, all business income must be apportioned to this state by multiplying the income by a multiplier equal to 100 percent of the receipts factor described in section (4) of this rule.

(d) Each factor must be computed according to the method of accounting (cash or accrual) used by the taxpayer for the taxable year.

(e) See OAR 150-314.280-(M) for other methods of apportionment and allocation or modification of the method in this rule that may be allowable.

(3) Definitions as used in this rule, unless the context otherwise requires:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement, or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(A) A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(B) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) "Commercial domicile" means:

(A) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(B) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed or directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally man-

aged and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, no matter where the services of such employees are performed, as of the last day of the taxable year.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services provided by the merchant to the credit card.

(f) "Financial corporation" has the same meaning as "financial organization" in subsection (3)(g) of this rule.

(g) "Financial organization" is defined in ORS 314.610(4).

(h) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans do not include: loans representing property acquired in lieu of or pursuant to a foreclosure under section 595 of the federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from other depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(i) "Loan secured by real property" means that 50 percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(j) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(k) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(l) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(m) "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly:

(A) Starts his or her work and to which the employee customarily returns in order to receive instructions from the employer, or

(B) Communicates with customers or other persons, or

(C) Performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points.

(n) "Real property owned" and "tangible personal property owned" means real and tangible personal property, respectively,

(A) On which the taxpayer may claim depreciation for federal income tax purposes; or

(B) Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(o) "Regular place of business" means an office at which the taxpayer conducts business in a regular and systematic manner and that is continuously maintained, occupied, and used by employees of the taxpayer.

(p) "State" is defined in ORS 314.610, paragraph (8).

(q) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(r) "Taxable" is defined as "taxable in another state" in ORS 314.620.

(s) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

(4) Receipts Factor.

(a) In general. The receipts factor is a fraction as provided in ORS 314.665(1). The receipts factor is comparable to the sales factor for purposes of ORS 314.650. The receipts factor includes only those receipts described herein that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. See OAR 150-314.665(4).

(c) Receipts from the lease of tangible personal property.

(A) Except as described in paragraph (B) of this subsection, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(B) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(A) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than 50 percent of the fair market value of the real property is located within this state. If more than 50 percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection must be included in the numerator of the receipts factor if the borrower is located in this state.

(B) The determination of whether the real property securing a loan is located within this state is made as of the time the original agreement was made, and any and all subsequent substitutions of collateral are disregarded.

(e) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.

(A) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes all net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card-holders.

(j) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts are computed net of any card holder charge backs, but are not reduced by any interchange transaction

fees or by any issuer's reimbursement fees paid to another for charges made by its card- holders.

(k) Loan servicing fees.

(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(C) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor must include such fees if the borrower is located in this state.

(l) Receipts from services. See OAR 150-314.665(4).

(m) Receipts from investment assets and activities and trading assets and activities.

(A) Interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities, trading account assets, federal funds; securities purchased and sold under agreements to resell or repurchase, options, future contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (i) and (ii) of this paragraph, the receipts factor includes the amounts described in such subparagraphs.

(i) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The receipts factor includes the amount by which interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(B) The numerator of the receipts factor includes interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities described in paragraph (A) that are attributable to this state.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph), attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the average value of such trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(iv) For purposes of this paragraph, average value is determined using the rules for determining the average value of tangible personal property set forth in subsections (c) and (d) of section (5).

(C) In lieu of using the method set forth in paragraph (B) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph) attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(D) If the taxpayer elects or is required by the department to use the method set forth in paragraph (C) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior written permission from the department, or the department requires, the use of a different method.

(E) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines are presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth under ORS 314.665.

(o) Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) Property Factor.

(a) In general. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real property, tangible personal property, loans, and credit card receivables located and used within this state during the taxable year and the denominator of which is the average value of all such property located and used both within and without this state during the taxable year.

(b) Property included. The property factor includes only property the income or expenses of which are included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged off for federal income tax purposes is treated as charged off for purposes of this section.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding.

(d) Average value of property owned by the taxpayer. See OAR 150-314.655(2)-(A) and 150-314.655(3).

(e) Average value of real property and tangible personal property rented to the taxpayer. See OAR 150-314.655(2)-(B).

(f) Location of real property and tangible personal property owned by or rented to the taxpayer.

(A) Except as described in paragraph (B) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(B) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft is deemed to be used in this state and the amount of value that is included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.

(g) Location of loans.

(A)(i) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state is presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(III) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in subparagraph (A)(ii) of this section may be rebutted upon a showing by the department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is located within this state if:

(I) The taxpayer had a regular place of business within this state at the time the loan was made; and

(II) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(B) In the case of a loan that is assigned by the taxpayer to a place without this state that is not a regular place of business, it is presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined by subsection (3)(c), was within this state.

(C) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue will be reviewed on a case-by-case basis and consideration will be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval," and "administration" are defined as follows:

(i) Solicitation. Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business that the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination, and security required). Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iv) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) Administration. Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables are treated as loans and are subject to the provisions of subsection (g) of this section.

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state, absent any change of material fact, remains assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business there.

(6) Payroll factor. In general. The payroll factor is determined as provided in ORS 314.660 and the rules thereunder.

(7) When an Oregon consolidated group includes both financial corporations and nonfinancial corporations, Oregon returns must be filed as follows:

(a) If a financial corporation and one or more nonfinancial corporations are subject to taxation by Oregon:

(A) The financial corporation must file a return in its name under the provisions of ORS 317.710(5)(b), apportioning the income of the entire unitary group included in its federal consolidated return under the provisions of this rule. The factor numerators must include the Oregon property, payroll and receipts of the financial corporation only. The denominators must include the total property, payroll, and sales or receipts of the entire unitary group that is included in income or loss subject to apportionment.

(B) The nonfinancial corporations subject to Oregon taxation must file a consolidated return in the name determined under the provisions of OAR 150-317.710(5)(a)–(A). The income of the entire unitary group included in their consolidated federal return, including the financial corporation, must be apportioned using the standard apportionment factors under ORS 314.655 through 314.665. The numerators of the apportionment factors must include the Oregon property, payroll, and sales of the nonfinancial corporations and exclude the Oregon property, payroll, and receipts of the financial corporation. The denominators of the apportionment factors must include the property, payroll, and sales or receipts of the entire unitary group that is included in income or loss subject to apportionment.

(b) If a financial corporation is the only member of the unitary group subject to Oregon taxation, the income of the entire unitary group included in its consolidated federal return must be apportioned as provided in this rule. The Oregon property, payroll, and receipts of the financial corporation must be included in the apportionment factor numerators. The total property, payroll, and receipts or sales of the entire unitary group that is included in income or loss subject to apportionment must be included in the apportionment factor denominators.

(c) If no financial corporation is subject to Oregon taxation, but one or more nonfinancial corporations are, the standard apportionment factors provided in ORS 314.655 through 314.665 must be applied to the income of the entire unitary group, including any financial corporations. The Oregon property, payroll, and sales of the nonfinancial corporations must be included in the apportionment factor numerators. The denominators of

the apportionment factors must include the property, payroll, and sales or receipts of the entire unitary group that is included in income or loss subject to apportionment.

Stat. Auth.: ORS 305.100 & 314.280
Stats. Implemented: ORS 314.280
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2002, f. & cert. ef. 12-31-02; REV 2-2003, f. & cert. ef. 7-31-03; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef 1-1-06

150-314.280(3)
Election to Use Alternative Apportionment Weightings by Taxpayers Engaged in Utilities or Telecommunications; Revocation of Election

(1) A taxpayer engaged in utilities or telecommunications as defined in ORS 314.280(3)(e)(A) and (B) may elect to use the double-weighted sales apportionment factor weightings as provided in ORS 314.650 (1999 Edition).

(2) This election is made by checking the appropriate box in the information section of the original or amended tax return for each tax year for which the election is made to use the alternative factor weightings.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.280
Hist.: REV 8-2002, f. & cert. ef. 12-31-02; REV 3-2005, f. 12-30-05, cert. ef 1-1-06

150-314.415(7)
Separate Refunds When a Joint Return Has Been Filed

(1) The department may, as a convenience to taxpayers, issue separate refunds when either spouse submits a signed request. To issue separate refunds when a joint refund check has already been issued, the check must be returned uncashed. If either spouse has an amount owing to the state of Oregon, any refund due that person will be applied to the liability and the balance, if any, issued in a separate refund check.

(2) For purposes of this rule, the separate adjusted gross income of each spouse is determined without regard to community property law.

(3) If the refund is being held for application against an amount owed to an agency of the state of Oregon, the request for separate refunds must be mailed to the Department of Revenue within 30 days of the date of the Notice of Proposed Adjustment and/or Distribution. Separate refunds will not be made if the request is not received timely.

(4) Pursuant to ORS 18.655(2), the department cannot issue separate refunds when a garnishment or levy has been served on the department for one or both spouses.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 1-69; 11-71; 12-19-75; 1-1-77, Renumbered from 150-316.192(2)-(A); 12-31-85; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-314.415(6), REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.505-(A)
Estimated Tax: When Estimates Are Required; Refunds Prior to Filing of Return

(1) Every corporation or group of corporations required to file an Oregon excise or income tax return and expecting to have a tax liability of $500 or more must make estimated tax payments. Estimated tax liability means the tax as computed under ORS Chapter 317 or 318, less allowable credits. For purposes of determining whether estimated tax liability exceeds $500, a credit resulting from overpayment of tax for a prior year is not taken into account.

(2) Generally, estimated tax payments will not be refunded prior to the taxpayer's filing of the tax return for the year for which the estimated tax payments were made. The fact that the estimated tax payments made exceed the required payments based upon an exception to underpayment is not sufficient cause to refund such excess prior to the filing of the Oregon tax return. Where taxpayers establish to the satisfaction of the department that the facts warrant a refund, a refund of estimated taxes can be made prior to the filing of the tax return. Examples of fact situations that may be considered sufficient to warrant a refund are as follows:

Example 1: Estimated tax payments were made by a corporation that qualified as an S corporation for the entire tax year through the date the refund is requested.

Example 2: Estimated tax payments were made by a corporation that will not be required to file a return for the tax year for which the estimated tax payments were made.

Example 3: The estimated tax payments were intended for the Internal Revenue Service but were sent to the Department of Revenue in error.

Example 4: Taxpayer provides proof that the taxpayer intended the payment for another account or liability and the payment was misapplied to their estimated tax by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.505
Hist.: 9-74; 12-1975; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 4-2003, f. & cert. ef. 12-31-03; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.515
Estimated Tax: Due Dates of Payments for Short-Period Returns

If a return is filed for a short period of less than 12 months, the estimated tax payments are due as follows:

(1) If the period covered is less than four months, only one payment is required. It is equal to 100 percent of the estimated tax and is payable on the due date of the return.

(2) If the period covered is four months or longer but less than six months, two payments are required. One-half of the estimated tax is due on the 15th day of the fourth month. The balance is due on or before the due date of the tax return, not including extensions.

(3) If the period covered is six months or longer but less than nine months, three payments are required. One-third of the estimated tax is due on the 15th day of the fourth month, one-third on the 15th day of the sixth month and the balance on or before the due date of the tax return, not including extensions.

(4) If the period covered is nine months or longer, but less than twelve months, four payments are required. One-fourth of the estimated tax is due on the 15th day of the fourth month, one-fourth on the 15th day of the sixth month, one-fourth on the 15th day of the ninth month, and the balance on or before the due date of the tax return, not including extensions.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.515
Hist.: 9-74; 1-1-77; 12-31-77; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81, Renumbered from 150-314.515; Repealed by: RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-314.515-(A); RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.650
Apportionment Formula

(1) All business income of each trade or business of the taxpayer must be apportioned to this state by use of the apportionment formula set forth in ORS 314.650. The apportionment formula includes the property factor provided in ORS 314.655 and the rules thereunder, the payroll factor provided in ORS 314.660 and the rules thereunder, and the sales factor provided in ORS 314.665 and the rules thereunder.

(2) For tax years beginning on or after July 1, 2005, business income is apportioned using only the sales factor.

(3) For tax years beginning on or after July 1, 2005, the apportionment formula for a taxpayer in the forest products industry meeting the criteria provided in ORS 314.650(2)(a) is the formula provided in sections (5) and (7) of this rule.

(4) For tax years beginning on or after May 1, 2003 and before July 1, 2005, the apportionment formula is 10 percent of the property factor, plus 10 percent of the payroll factor, plus 80 percent of the sales factor.

(5) For tax years beginning on or after January 1, 1991 and before May 1, 2003, the numerator of the apportionment formula is the sum of the property factor, plus the payroll factor, plus two times the sales factor. The denominator of the apportionment formula is four.

(6) For tax years beginning before January 1, 1991, the numerator of the apportionment formula is the sum of the property factor, plus the payroll factor, plus the sales factor. The denominator of the apportionment formula is three.

(7) For tax years beginning on or after January 1, 1989 and before May 1, 2003, if the denominator of the property, payroll, or sales factor is zero, the denominator of the apportionment formula is reduced by the number of factors with a denominator of zero.

(8) The apportionment factors of a corporation that is a member of a partnership, limited liability company treated as a partnership or unincorporated joint venture (i.e. the "related entity"), that is a part of the corporation's overall business operations, must include the corporation's share of the property, payroll and sales of the related entity. For the purpose of computing the apportionment factors, transactions between the corporation and the related entity must be eliminated to the extent of the corporation's percentage of interest in the related entity. The corporation's share of the related entity's property, payroll and sales are based on its percentage of interest in the related entity that is equal to the ratio of its capital account plus its share of the related entity's debt to the total of the capital accounts of all members of the related entity plus total related entity debt. The capital accounts of the members must reflect the average of the accounts for the period of the tax return. The average of the capital accounts may be computed by averaging the beginning and ending balances or monthly balances. Capital accounts of a related entity must be adjusted to reflect a member's adjusted basis in contributed property, rather than fair market value. The corporation's share of a related entity's debt is determined under IRC 752(a) and 752(b) and the regulations thereunder, irrespective of whether or not the related entity is a true partnership.

(9) For the purpose of computing the apportionment factors for a consolidated Oregon return, inter-company transactions between a unitary affiliate of a partner or member and the related entity described in section

(8) of this rule are treated the same as intercompany transactions directly between the affiliated corporations, to the extent of the corporate partner's or member's ownership share of the related entity. Inter-company transactions between affiliated corporations filing a consolidated Oregon return are eliminated as provided in section (3) of OAR 150-314.715(3)(b).

Example: Corporations A, B, and C file a consolidated Oregon return. A and B each own 50 percent of partnership P. P is part of the overall business operations of the three corporations. P buys 80 percent of its raw materials from C. The intercompany sales between P and C must be eliminated from the apportionment formula for the consolidated Oregon return of the corporations. Transactions between C and P are considered to be directly between the three corporations.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.650

Hist.: 8-73; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.665(2)-(A)

Sales Factor; Sales of Tangible Personal Property in this State

The rule adopts a model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states.

(1) For purposes of apportioning income under ORS 314.665 and this rule, gross receipts from the sales of tangible personal property (except sales to the United States Government; see OAR 150-314.665(2)-(B)) are in this state:

(a) If the property is delivered or shipped to a purchaser within this state (Oregon) regardless of the f.o.b. point or other conditions of sale; whether transported by seller, purchaser, or common carrier; or

(b) If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Example 1: A seller with a place of business in State A is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including Oregon, makes arrangements to hire a common carrier to pick up merchandise, f.o.b. plant, at the seller's place of business and have it delivered to the purchaser's outlet in Oregon. The seller, who is subject to Oregon excise tax, must treat this as a sale of property delivered or shipped to a purchaser in Oregon.

Example 2: A seller with a place of business in Oregon is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including State A, sends its own truck to pick up the merchandise at the seller's place of business and have it transported to the purchaser's outlet in State A. The seller is taxable in State A. The seller must treat this as a sale of property delivered or shipped to a purchaser in State A.

(c) Notwithstanding subsection (1)(b) of this rule, for tax years beginning on or after January 1, 2006, the sale of goods from a public warehouse is not considered to take place in Oregon if:

(A) The taxpayer's only activity in Oregon is the storage of the goods in a public warehouse prior to shipment; or

(B) The taxpayer's only activities in Oregon are the storage of the goods in the public warehouse prior to shipment and the presence of employees within this state solely for purposes of soliciting sales of the taxpayer's products.

(2) Property is deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example 3: The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states including Oregon. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in Oregon. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example 4: The taxpayer makes a sale to a purchaser who maintains a central warehouse in Oregon at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in Oregon is property "delivered or shipped to a purchaser within this state."

(4) The term "purchaser within this state" includes the ultimate recipient of the property if the taxpayer in Oregon, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within Oregon.

Example 5: A taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Oregon pursuant to purchaser's instructions. The sale by the taxpayer is in Oregon.

(5) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in Oregon, the sales are in Oregon.

Example 6: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in Oregon in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Oregon.

(6) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to Oregon if the property is shipped from an office, store, warehouse, factory, or other place of storage in Oregon.

(a) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state imposes a net income tax on the seller.

(b) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state would have jurisdiction to tax the seller on net income under the constitution of the United States and federal Public Law (P.L.) 86-272.

(c) OAR 150-314.620-(C) provides that sales and activities in a foreign country will be treated the same as those in another U.S. state for determining if the foreign country has jurisdiction to tax the seller on net income.

(d) The guidelines provided by federal P.L. 86-272 apply equally to activities regarding sales to unrelated parties and sales to affiliated corporations.

(e) The immunity provided by P.L. 86-272 is not lost when a business engages in de minimis activities unrelated to the solicitation of orders in a state or foreign country where its only other activities are those protected by P.L. 86-272. Examples of such immune activities include the following:

(A) The board of directors of a corporation based in Oregon holds a meeting at a hotel in another state or in a foreign country,

(B) The president of a parent corporation based in Oregon meets with the managers of a subsidiary in a foreign country to discuss the subsidiary's five-year plan and capital acquisitions budget.

(C) The controller of a parent corporation based in Oregon meets with the accounting staff of a subsidiary in a foreign country to discuss federal financial reporting requirements.

Example 7: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Oregon. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Oregon for approval and are filled by shipment from the inventory in Oregon. Since taxpayer is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Oregon, the state from which the merchandise was shipped.

Example 8: A parent company sells its product to a subsidiary, organized in a foreign country, that uses the parent's product in manufacturing its product. Because of the parent-subsidiary relationship, orders are not solicited in the same way as sales to unrelated customers. Instead, the products are shipped as needed to the subsidiary. Officials from the parent company maintain a close liaison with the foreign subsidiary on the planning and design of the items sold. After the parties agreed on a contract in which the parent would manufacture and sell certain items to the subsidiary, the close working relationship continued between the technicians of both companies. Many of the parent's employees made regular trips to the subsidiary after the contract was signed, to take care of such items as manufacturing problems, installation problems, repair work, redesign discussions, and/or production problems. Parent's production engineers, production workers, metallurgists, quality control managers, and assembly supervisors were some of the personnel who spent several weeks of the year working closely with the foreign subsidiary. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is not considered to be protected under P.L. 86-272 and therefore is not required to attribute sales to Oregon.

Example 9: A subsidiary organized in a foreign country purchases products from its parent, a manufacturing company in Oregon. The subsidiary places a purchase order with the parent on an "as needed" basis. The parent, upon receipt of the purchase order, makes shipment to the subsidiary. The subsidiary, upon receipt of the product, makes payment to the parent. The parent has a relationship with its foreign subsidiary that is unrelated to the sale of its product. Officials from the parent company occasionally visit the foreign subsidiary to discuss matters unrelated to the sale of its product, including: (1) public relations, (2) personnel matters, and (3) government relations. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is considered to be protected under P.L. 86-272 and is required to attribute the sales to Oregon.

(7) If a taxpayer whose salesman operates from an office located in Oregon makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in Oregon.

Example 10: The taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Oregon.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.665

Hist.: 12-70; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.752

Business Tax Credits Available to S Corporation Shareholders

The following credits may be claimed by shareholders of an S corporation filing individual returns, as provided in subsection (2) of ORS 314.752, but are not available to shareholders included in a composite return as provided in OAR 150-2005 Oregon Laws, Chapter 387:

(1) Voluntary removal of riparian land from farm production credit provided by ORS 315.113,

(2) On-farm processing facilities credit provided by ORS 315.119,

(3) Employee and dependent scholarship program payments provided by ORS 315.237,

(4) First break program credit provided by ORS 315.259,

(5) Individual development accounts credit provided by ORS 315.271,

(6) Emission reducing production technology or process (pollution prevention) credit provided by ORS 315.311,

(7) Long term care insurance credit provided by ORS 315.610,

(8) Trust for cultural development account contributions credit provided by ORS 315.675,

(9) Lending institution loans for affordable housing credit provided by ORS 317.097,

(10) Energy conservation loans to residential fuel oil customers or wood heating residents credit provided by ORS 317.112,

(11) Long term enterprise zone facilities credit provided by ORS 317.124,

(12) Farmworker housing loans credit provided by ORS 317.147,

(13) Contribution of computers or scientific equipment for research to educational organizations credit provided by ORS 317.151,

(14) Qualified research activities credit provided by ORS 317.152,

(15) Alternative qualified research activities credit provided by ORS 317.154,

(16) University venture development fund credit provided by section 5, chapter 592, Oregon Laws 2005, and

(17) Water transit vessel credit provided by section 1, chapter 677, Oregon Laws 2005.

Stat. Auth.: ORS 305.100 & 314.752
Stats. Implemented: ORS 314.752
Hist.: REV 2-2003, f. & cert. ef. 7-31-03; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-315.204-(A)
Dependent Care Credits: General Information

(1) For tax years beginning on or after January 1, 2002, taxpayers must apply to the Child Care Division of the Employment Department and receive certification before being eligible for the Dependent Care Assistance or Dependent Care Information and Referral Services credits. See chapter 414, division 300 of the Oregon Administrative Rules (e.g., OAR 414-300-0000 to 414-300-0410) and contact the Child Care Division of the Employment Department for more information.

(2) For taxable years beginning on or after January 1, 1988, and prior to January 1, 2017, the following credits are available to employers that provide dependent care assistance or information and referral services to their employees:

(a) Dependent Care Assistance Credit. This credit is available to employers for the expenses paid or incurred by the employer for the care of employees' dependents.

(b) Dependent Care Information and Referral Services Credit. This credit is available to employers that provide information and referral services to assist their employees in obtaining dependent care.

(3) Any tax credit otherwise allowable that is not used by the taxpayer in a tax year may be carried forward and offset against the taxpayer's tax liability for up to five tax years. The amount of credit carried forward to a succeeding tax year is the sum of credits that exceed the tax liability, after other credits, for all prior tax years that are within the carryover period.

(a) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer must use the credit from the prior year first and then the current year's credit.

(b) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

(4) If the taxpayer is an individual and the tax year is changed resulting in a short period return (a return covering a period of less than 12 months), the credit must be computed in a manner consistent with ORS 314.085.

(5) If the taxpayer is a part-year resident individual, the credit must be computed in a manner consistent with ORS 316.117.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.204
Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.134-(A); REV 8-2001, f. & cert. ef. 12-31-01; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-315.262
Working Family Childcare Credit

(1) Definitions. For purposes of ORS 315.262 and this rule:

(a) "Qualifying child" is:

(A) A son, daughter, stepson, stepdaughter, grandchild, step grandchild, brother, sister, stepbrother, stepsister, niece, nephew, step niece, step nephew, eligible foster child, child legally placed with the taxpayer for adoption by the taxpayer, or adopted child of the taxpayer, and descendents of all such individuals who;

(i) Lived more than half the year with the qualifying taxpayer;

(ii) Is under 13 years of age or who is a disabled child of the taxpayer for whom the additional exemption credit under ORS 316.099 is allowed; and

(iii) Does not provide more than half of his or her own support.

(b) "Federal poverty level" is the federal poverty level for the same tax year as determined by the federal Department of Health and Human Services.

(c) Household size is generally the number of individuals related by birth, marriage, or adoption living in the home that are allowed as exemptions on the taxpayer's return. There are special rules for children whose parents are divorced, legally separated, permanently living apart, or not married but living together. See section (2) below.

(2) For purposes of this credit, a qualifying child is included in the household size of the custodial parent even if the exemption was released to a noncustodial parent under Internal Revenue Code (IRC) section 152(e). In situations where both parents live in the same home with the child more than 50 percent of the year, the child is included in the household size of the parent with the highest adjusted gross income (AGI). An individual cannot be counted in household size on more than one tax return.

Example 1: Dale and Lisa are divorced with two children. The children live in Lisa's home with Lisa for more than half of the year, but she releases the dependent exemption for one child to Dale. Dale has the children on certain weekends, holidays, and one month in the summer. Lisa has remarried and her mother-in-law is a qualifying dependent having lived in Lisa's home the entire year. Both Dale and Lisa may claim the credit based on the child care expenses each paid. Lisa's household size equals five (herself, spouse, one dependent child, one dependent child whose exemption is released to the father, and mother-in-law.) Dale has not remarried so his household size equals one (himself). Although he claims one child on his tax return, the child does not live with him and is not included in his household size.

Example 2: John and Kim have never been married and have two children; Kyle who lives with John all year, and Shannon who lives with Kim all year. In the summer each child spends one month with the child's other parent and sibling. John has both Kyle and Shannon in July and Kim has both kids in August. In addition to the child care for the child that lives with them, each parent also has daycare expenses during those months where both children are living in the parent's home. John may claim one "qualifying child" because Kyle lives with him. He may claim the expenses he paid for Kyle, but he may not claim the child care expenses he paid for Shannon because Shannon is not his qualifying child; Shannon is Kim's qualifying child. Kim may claim one "qualifying child" because Shannon lives with her. She may claim the expenses she paid for Shannon, but she may not claim the child care expenses she paid for Kyle because Kyle is not her qualifying child; Kyle is John's qualifying child. Each parent will have a household size of two.

Example 3: Chris and Shelly live together but are not married. They have two children together; Tyler and Alec. Chris's AGI is $55,000 and Shelly's AGI is $17,000. The children are qualifying children of both Chris and Shelly because Tyler and Alec live with both parents for more than half the year. Because Tyler and Alec are qualifying children of more than one taxpayer they are deemed to be the qualifying children of Chris because Chris's AGI is higher than Shelly's.

Example 4: Jason and Larena have three children and also support their parents who do not live with Jason and Larena in their home. Because they meet the federal tests for claiming individuals not living with them, their federal return allows seven exemptions. Jason and Larena cannot increase their household size by the people they claim as dependents on their federal return that do not live with them. Their household size for purposes of the working family child care credit is five.

(3) For purposes of determining the credit, the credit is limited to costs associated with child care. The payments must be made by the parent claiming the working family child care credit. Payments made by an entity or individual other than the parent claiming the credit are not payments made by the taxpayer.

Example 5: Maria and Kendall are not married and live together with their son, Michael. Michael's child care expense for the year is $4,600 of which Kendall pays half. Kendall's adjusted gross income (AGI) is $40,000 and Maria's AGI is $16,000. Under federal law, Kendall is entitled to claim Michael's dependent exemption because Michael is Kendall's qualifying child. Kendall may claim the working family child care credit based on the $2,300 of child care he paid and a household size of two. Maria may not claim the working family child care credit because she does not have a "qualifying child" for purposes of this credit.

(a) Costs associated with child care include:

(A) Child care expenses paid with amounts excluded from income as dependent care benefits under IRC section 129;

(B) Child care expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC section 125; or,

(C) Reimbursement of child care expenses as part of a flexible spending arrangement under IRC section 125.

Example 6: Joan's younger child (Susan) stays at her employer's on-site child-care center while she works. The value of the benefits from this child care qualifies to be excluded from her income under IRC section 129. She received this benefit instead of a salary increase. Her employer reports the value of this service as $3,000 for the year. This $3,000 is shown in box 10 of her Form W-2, but is not included in taxable wages in box 1. A neighbor cares for Joan's older child (Seth) after school, on holidays, and during the summer. She pays her neighbor $2,400 for this care. Because the benefits Joan received from her employer qualify to be excluded from income under IRC 129 Joan may claim a working family child care credit based on $5,400 in qualifying child care expenses.

Example 7: Jorge is single with one qualifying child. His employer provides him a

$1,000 qualified child care benefit under an IRC section 125 cafeteria plan. This $1,000 is excluded from Jorge's income. Jorge's child care expense is $2,900, of which $1,000 is paid through the section 125 plan and $1,900 is paid by Jorge. Jorge may claim a working family child care credit based on $2,900 in qualifying child care expenses.

Example 8: Tanner has two qualifying children. He contributes $4,000 pre-tax each year to a flexible spending account (FSA) under IRC section 125. He provides his employer with the required documentation in order to be reimbursed for his child care expenses. Tanner has $5,000 in child care expenses for his two children. He paid $1,000 with after-tax dollars and he was reimbursed $4,000 from his pre-tax FSA. Tanner may claim the working family child care credit based on $5,000 in qualifying child care expenses.

(b) Costs associated with child care do not include:

(A) Expenses for a child's kindergarten through twelfth grade education at a public or a private institution;

(B) Expenses for extracurricular activities or elective courses such as swimming, dance lessons, or other such activities unless the activities or courses are an ordinary part of the care provided to the child and cannot be separated;

(C) Expenses for care provided when one spouse on a joint return is not gainfully employed, not seeking employment, or not a full-time or part-time student;

(D) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the Employer Related Day Care program) for child care expenses on behalf of the taxpayer who is claiming the working family child care credit;

(E) The value of a child care owner-operator's forgone revenue relating to child care that the owner-operator provided to his or her own child; or,

(F) Transactions that are not arm's-length or have no economic substance.

Example 9: Rusty has a five-year-old son who attends a local academy. He pays $750 per month for his son's kindergarten and child care. Of the amount he pays each month, $500 is the contract price for child care and $250 is an additional amount he pays for the child's education. Rusty can only claim $500 per month as qualifying child care.

Example 10: Jeff and Rochelle are married and they have a three-year old son, Jakob. Jeff and Rochelle are both gainfully employed and they send Jakob to a daycare center near Rochelle's work for child care. Jakob's parents signed him up for a swimming class through the daycare center that costs $50 per month. They also signed him up for a $75 per month second language class that the daycare center offers. The daycare center charges $400 per month for the full-time care of a toddler. The daycare center bills Jeff and Rochelle $525 per month for Jakob's child care and activities. Jeff and Rochelle can use the child care expenses they paid ($400 per month or $4,800 annually) to determine the working family child care credit they are entitled to claim. They cannot use the amounts they paid for the swimming lessons or the language class.

Example 11: Kent and Kristen are married and Kent stays home to take care of their four children. Kristen earns $55,000 annually and they paid $4,000 in child care during the year. The child care expenses they paid are not costs associated with both Kent and Kristen being gainfully employed, seeking employment, or being a full-time or part-time student. Kent and Kristen cannot claim the working family child care credit.

Example 12: Jim and Denise are married and have two children. Denise works full-time and earns $25,000. Jim is a full-time student at the local college. He also works part-time and earns $2,000. They paid $3,600 in child care expenses while Jim was at school and work. Jim and Denise's qualifying child care expenses are $3,600 because Denise is gainfully employed and Jim is a full-time student.

Example 13: Debbie works full time and qualifies for state assistance in paying her child care expenses. The child care provider charges Debbie $600 per month to care for her two children or $7,200 per year. Of the $600 per month, the state pays $450 and Debbie has a copay of $150. Debbie cannot claim the entire $7,200 because she did not pay it. She can only claim $1,800, the amount she actually paid.

Example 14: Shirley is the owner-operator of a registered daycare facility. She cares for six children every day, of which two are her own children. Shirley cannot use the value of the two spaces her children use to calculate her working family child care credit because the forgone revenue is not a cost associated with child care.

(4) Schedule WFC, Working Family Child Care Credit.

(a) To claim the working family child care credit, the taxpayer must provide all information requested on the Schedule WFC and file the Schedule WFC with the tax return to the department. Failure to file a completed Schedule WFC with the department may result in denial of the working family child care credit.

(5) Married Individuals Filing Separately:

(a) Taxpayers filing separate returns who share a common household cannot claim the working family child care credit.

(b) Taxpayers maintaining separate residences at the end of the tax year, and who intend to live apart in the future, determine their household size based on the computation defined in subsection (1)(c) of this rule.

Example 15: John and Sue are married and have two children. They are legally separated and live apart permanently, and one child lives with each. John and Sue file separate returns for the tax year and each claims a child as a dependent. John and Sue will each have a household size of two to determine the percentage of child care costs each may claim as a working family child care credit. John may claim the credit based on the child care costs he paid for the child that lives with him and Sue may claim the credit based on the child care costs she paid for the child that lives with her.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.262

Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 4-2003, f. & cert. ef. 12-31-03; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-316.099

Disabled Child Exemption Credit

(1) For tax years beginning on or after January 1, 2005, an additional personal exemption credit is allowed for dependent children who are disabled on the last day of the tax year.

(2) For tax years beginning before January 1, 2005, an additional personal exemption credit is allowed for dependent children who are age 17 or younger and are disabled on the last day of the tax year.

(3) For all years, the child with a disability must be certified annually by a state department of education to be eligible for early intervention services or an individualized education program (IEP) under the federal program for Individuals with Disabilities Education Act (IDEA).

(4) Upon request of the department, the taxpayer claiming the personal exemption credit for a disabled child must provide the first sheet of the applicable year's IEP or Individualized Family Service plan showing the child's name, disability, and education eligibility for each year the credit is claimed.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.099

Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-317.018

Adoption of Federal Law

Generally, Oregon corporation excise tax law, as related to the definition of taxable income, is tied to federal tax law as applicable to the tax year of the taxpayer. Changes enacted to the definition of federal taxable income are effective for Oregon tax purposes in the same manner as for federal tax purposes, unless otherwise provided in Oregon tax law.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.018

Hist.: 10-5-83, 12-31-83; 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-317.097

Affordable Housing Credit; Definitions; Transfers; Carry Forward of Unused Credit

(1) Definitions, as used in ORS 317.097.

(a) Community Rehabilitation Program. A "community rehabilitation program" is a program sponsored by a nonprofit corporation or local government unit for the rehabilitation of low income housing.

(b) Project. A "project" is one or more units of housing that will be sold or rented to households whose incomes are less than 80 percent of the area median income.

(c) Time the loan for housing construction, development or rehabilitation is made. The "time the loan for housing construction, development or rehabilitation is made" is the date a note is signed for a loan and the interest rate becomes effective with the closing of the loan, or the date a conversion loan becomes a permanent loan. Either date may be used to determine the interest rate on nonsubsidized loans made under like terms and conditions as the qualifying affordable housing loan.

(2) If a qualifying loan is transferred by a lending institution to another entity, the transferee's credit must be computed in the same way and subject to the same limitations as the prior lending institution's credit. The transferee cannot claim a credit on the loan beyond the 20 year period that started with the date the loan was originally made.

(3) Unused credits from tax years starting before January 1, 1995 may be carried forward 15 years. Unused credits from tax years starting on or after January 1, 1995 may be carried forward 5 years.

(4) See OAR 813-110-0005 through 813-110-0040 for Housing and Community Development Department rules relating to the Oregon Affordable Housing Tax Credit Program.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.097

Hist.: RD 1-1990, f. & cert. ef. 3-15-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-317.267-(B)

Modification for Dividends Received: Tax Years 1986 and Later

(1) For dividends received in tax years beginning on or after January 1, 1986 and before January 1, 1987, a corporation is allowed to subtract from federal taxable income 85 percent of dividends received or deemed received from another corporation.

(2) For dividends received in tax years beginning on or after January 1, 1987 and ending before January 1, 1988, a corporation is allowed to subtract from federal taxable income 80 percent of dividends received or deemed received from another corporation. However, in the case of any dividend on debt-financed portfolio stock as described in section 246A of

the Internal Revenue Code, the subtraction allowed must be reduced under the same conditions and in the same amount as the dividends received deduction is reduced for federal tax purposes.

(3) For dividends received or accrued after December 31, 1987, in tax years ending after December 31, 1987, a corporation is allowed to subtract from federal taxable income 80 percent of dividends received or deemed received from another corporation. Dividends deemed received includes subpart F income included in federal taxable income pursuant to IRC Section 951. In order to take the Oregon dividends received deduction, however, the taxpayer must first add back the federal dividend received deductions allowed by Internal Revenue Code (IRC) Sections 243 and 245 and the dividends eliminated under the federal consolidation rules. Exceptions to this general rule are as follows:

(a) Dividends received from corporations owned less than 20 percent by the recipient must be reduced by a 70 percent rather than 80 percent dividends received deduction for dividends received or accrued after December 31, 1987.

(b) Dividends received from a foreign sales corporation and deducted under IRC Section 245(c) are not added back. These dividends are totally excluded from Oregon taxable income.

(c) Dividends received from a related domestic international sales corporation are totally excluded from Oregon taxable income. A subtraction is allowed for these dividends to the extent they are included in federal taxable income.

(d) Dividend income included in federal taxable income pursuant to the "gross-up" provisions of IRC Section 78 is not taxable by Oregon. These dividends are subtracted in full under ORS 317.273.

(e) Dividends eliminated under IRC section 243(a)(3) are not added back to federal taxable income on the Oregon return if the recipient and the payer corporations are both members of the same unitary group filing an Oregon consolidated tax return. If they are not members of the same Oregon consolidated group, the 100 percent federal dividend deduction is added back to federal taxable income and the appropriate Oregon dividends received deduction is subtracted.

(4) Unlike the federal dividend received deduction, the Oregon deduction is permitted on dividends received or deemed received from foreign as well as domestic corporations. Income included in federal taxable income pursuant to IRC Section 951(a) qualifies for the dividend received deduction. Such income is a dividend "deemed received." Dividends from tax exempt corporations and dividends that qualify for a federal dividend deduction limited to a certain measure of income qualify for the full Oregon dividend deduction. An example of the latter is a dividend from a Federal Home Loan Bank.

(5) An Oregon dividends received deduction is not allowed with respect to "dividends" that are not treated as dividends under federal law or dividends that are not included in federal taxable income as provided in ORS 317.267(1). For tax years beginning on or after January 1, 2006, ORS 317.267(2)(b) provides that a dividend that is not treated as a dividend under IRC section 243(d) or 965(c)(3) may not be treated as a dividend for purposes of the Oregon dividends received deduction.

Example: L corporation received $10,000 in "dividend" income from a mutual savings bank. L corporation does not own stock in the bank. The $10,000 represents interest income on funds deposited in the mutual savings bank, and not dividend income. Since these "dividends" are not treated as dividends for purposes of the federal dividends received deduction under the provisions of IRC section 243(d)(1), they are not eligible for the Oregon dividends received deduction.

(6) For tax years beginning on or after January 1, 2006, a taxpayer may not claim an Oregon dividend received deduction for a dividend if the federal dividends received deduction is not allowed because of IRC section 246(a) or (c).

(7) In the case of dividends on debt-financed portfolio stock, the percentage of the Oregon dividend received deduction will be reduced in the same manner as the federal deduction under IRC 246A.

(8) For tax years beginning before January 1, 2007, a dividends received deduction allowed under IRC section 965 for federal tax purposes is allowed in determining taxable income under ORS chapter 317 for the same tax year as the deduction is allowed for federal tax purposes. IRC section 965 provides a temporary dividends received deduction for cash dividends received from controlled foreign corporations.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.267
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 2-2003, f. & cert. ef. 7-31-03; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-320.305
State Lodging Tax

(1) For purposes of ORS 320.305:

(a) "Transient lodging provider" includes a person who operates a facility whether in the capacity of owner, managing agent, lessee, sublessee, mortgagee in possession, licensee, concessionaire, or any other capacity.

(b) "Nonprofit facility" means a lodging facility, owned by an IRC 501(c) exempt organization or an organization described in ORS 65.001(31), that is not operated for profit.

(2) Public and Private Providers Must Collect the Tax. The state lodging tax applies to rents charged for dwelling units, recreational vehicle spaces, and tent spaces provided by public and private persons. It applies to dwelling units and recreational vehicle and tent spaces offered to the general public by state and local parks departments. It also applies to dwelling units and spaces offered for rent to the general public on federal lands operated by a concessionaire on a contract basis with a federal agency such as the U. S. Forest Service, Bureau of Land Management, and the National Parks Service.

(3) Exemptions from the State Lodging Tax. The following are exempt from the state lodging tax:

(a) Health care facilities certified, licensed or registered by the Department of Human Services.

(b) Drug, alcohol abuse and mental health treatment facilities.

(c) Dwelling units used by the general public for less than 30 days per year. This refers to a total of 30 days over the course of the calendar year. The 30 days need not be consecutive. Even if a dwelling unit becomes temporarily exempt under subsection (3)(f), that period of usage applies toward the 30 day requirement of this subparagraph.

Example 1: Ralph owns a hunting lodge in the mountains. He rents the lodge out to the general public for three weeks a year during the hunting season. Because Ralph rents the lodge out for fewer than 30 days per year, he is not subject to the state lodging tax.

Example 2: Dave rents his vacation home to the Wright family for 45 consecutive days in May and June. This rental period is not subject to the state lodging tax as it is rented to the same person for more than 30 days. In July of that year Dave rents the same vacation home for 10 days to the Jacobson family. Because Dave rented his vacation home for more than 30 days over the course of the calendar year, a total of 55 days, he is subject to the state lodging tax and must collect and pay the tax on the 10 day stay of the second couple.

(d) Dwelling units during the time a government agency pays for use of the units to provide emergency or temporary housing.

Example 3: The Department of Human Services (DHS) contracts with several area motels to provide temporary emergency housing for its clients. Because DHS contracts and pays for these dwelling units for temporary emergency housing, these units are not subject to the state lodging tax.

(e) Dwelling units at a nonprofit facility.

Example 4: A nonprofit church camp is organized to serve the congregations of the Southern Willamette Valley. This camp is solely for the use of these congregations and is not rented to the general public for profit. The church camp is not subject to the state lodging tax.

(f) Dwelling units occupied by:

(A) The same person for a consecutive period of 30 days or more during the year. "Person" means either the occupant of the dwelling unit or the one who pays for the transient lodging. After 30 consecutive days, the person becomes a tenant and is no longer considered an occupant of transient lodging. In this case the 30 days must be consecutive.

Example 5: A major airline has an annual contract with a hotel near the airport. These dwelling units are used by out of town airline employees. Because the airline contracts and pays for the units for a consecutive period of more than 30 days per year, these units are not subject to the state lodging tax.

(B) Federal employees on federal business whose payment is made by the federal government.

(C) Persons with diplomatic immunity.

(4) Services Included in the Fee for Lodging. Generally, the tax applies to the entire fee charged for the use of a room or suite of rooms and all incidental services and amenities provided. If the fee charged for lodging includes other non-incidental services, then the tax will not apply to provision of such services if, in determining the amount on which to calculate the state lodgings tax, the provider reasonably allocates the fee charged to the dwelling unit and to other non-incidental services. Incidental services include but are not limited to fees for bringing a pet into the room, maid service and the provision of toiletries in the room. Non-incidental services may include, but are not limited to, meals, "free" transportation to the airport, or access to exercise equipment, pools, or spas unless such equipment or amenities are located within the room or suite of rooms or are accessible only by occupants of the room. Any allocation made for the State Lodgings Tax should be consistent with such allocation for a local lodging tax. If a separate fee is charged for the other services and the service is optional, that fee will not be subject to the tax. Examples of optional fees include but are not limited to fees for pay-per-view movies, room service charges, honor bar charges or restaurant meals charged to the room.

Example 6: The ABC Bed and Breakfast charges $100 per night for a room. Guests are provided a breakfast that is included in the per night fee. Guests may also have lunch or dinner at ABC and may charge the cost of these meals to their room. ABC has determined a similar breakfast could be purchased in a local restaurant for $7.50, leaving $92.50 as the charge for occupancy of the room. The state lodging tax applies to the $92.50 fee for the room. The tax does not apply to any charges for optional meals purchased by ABC's guests.

Example 7: Annie runs the Countryside Guest Ranch. The ranch is an all-inclusive resort where the guests pay a single fee per day for staying on the ranch with special offers available for guests wishing to stay for one or two weeks. The fee covers all lodgings, meals, horseback riding and entertainment. Annie has reasonably allocated 50 percent of the total fee to the provision of the lodging and 50 percent to the other amenities, such as horseback riding, use of the resort's tennis courts and pool. Annie would collect from her guests the state lodgings tax on the 50 percent of the fee that is allocated to the lodging rent.

Example 8: The Highlife Hotel charges a standard room rate based on single occupancy. The Young family has two children and a dog. They rent a room for one night. The basic room rate is $80 per night. There is a $10 charge for Mrs. Young who is the second adult. There is no charge for the children. The Youngs request a crib for their infant child, for which there is a $10 charge. There is a $10 charge for the family dog. The state lodging tax applies to these additional fees as well as to the standard room rate charge. The total charges on which the tax would be calculated are $110.

(5) Use of a Managing Agent. If a transient lodging provider uses a managing agent that is not an employee, the managing agent is considered the provider for the purposes of the tax and has the same duties and liabilities as the operator. Compliance with the provisions of the state lodging tax by either the lodging provider or the managing agent is considered compliance by both.

(6) Registration of Providers. A transient lodging provider must register with the department on forms provided by the department.

(7) Penalty Imposed. The person submitting the return required by ORS 320.315 must sign the return and is subject to the penalty for false swearing under ORS 162.075, which is a Class A misdemeanor.

Stat. Auth.: ORS 305.100 & 320.315
Stats. Implemented: ORS 320.305
Hist.: REV 3-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; REV 3-2004, f. & cert. ef. 6-25-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-2005 OL, Ch. 387
Oregon Composite Tax Return

(1) Definitions: The following definitions apply for purposes of 2005 Oregon Laws, Chapter 387 and this rule:

(a) "Distributive income" means the net amount of income, gain, deduction, or loss of a pass-through entity for the tax year of the entity and includes those items directly related to the entity and that are considered in determining the federal taxable income of the owner or, in the case of an owner that is a corporation, would be included in its federal taxable income had they been an individual.

(b) "Electing owner" means a nonresident owner that elects to participate in an Oregon composite tax return filed by a pass-through entity.

(c) "Modified distributive income" means the distributive income as defined in (1)(a) of this rule, of a pass-through entity, with the modifications provided in ORS chapter 316 and other Oregon law that directly relate to those items of income, gain, loss or deduction of the pass-through entity that are taken into consideration by the pass-through entity in arriving at its distributive income. Such modifications include, but are not limited to, any Oregon modification necessary for depreciation, depletion, gain or loss difference on the sale of depreciable property, and any modification for federal tax credits, and do not include the federal tax subtraction, itemized deductions, and the Oregon standard deduction. Guaranteed payments are treated as a business income component of the entity's distributive income and attributed directly to the owner receiving the payment.

(d) "Nonelecting owner" means a nonresident owner of a pass-through entity that does not elect to participate in a composite return and who is required to file an Oregon individual income tax return.

(e) "Oregon-source distributive income" means the portion of the entity's modified distributive income that is derived from or connected with Oregon sources. For entities operating in Oregon and one or more other states, Oregon-source distributive income is determined by attributing to Oregon sources that portion of the modified distributive income of the entity, as defined in subsection (1)(c) of this rule, determined in accordance with the allocation and apportionment provisions of ORS 314.280 or 314.625 through 314.675.

(f) "Pass-through entity" means:

(A) A partnership;

(B) An S corporation;

(C) A limited liability company that is treated as a partnership; or

(D) An entity that is not defined as a trust under ORS 128.005, including:

(i) A business trust that provides for certificates to be issued to the beneficiary;

(ii) An investment trust;

(iii) A voting trust;

(iv) A security instrument;

(v) A trust created by the judgment of a court;

(vi) A liquidation trust;

(vii) A trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind;

(viii) An instrument wherein a person is nominee or escrowee for another;

(ix) A trust created in deposits in any financial institution; or

(x) A resulting trust or constructive trust; or

(xi) Another trust, the nature of which does not admit of general trust administration.

(E) The term "pass-through entity" does not include a trust that is an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both, but does include a resulting or constructive trust.

(2) General provisions. A pass-through entity doing business in or deriving income from sources within this state is required to file an Oregon composite tax return if requested by one or more electing owners. Estimated tax payments are required if the total Oregon tax due for any electing owner is expected to be $1,000 or more.

(a) Computation of tax. Each pass-through entity must calculate the tax for each electing owner of that entity. The composite tax liability for each electing owner, determined without regard to the tax credits allowed under subsection (2)(b) of this rule, is calculated by applying the Oregon tax rates based on the owner's filing status to the difference between the owner's share of the entity's Oregon-source distributive income for the taxable year and the owner's self-employment tax deduction, as provided for in subsection (2)(b) of this rule. The self-employment tax deduction, allowed pursuant to subsection (2)(b), if applicable, must be determined by multiplying the owner's federal deduction for one-half self-employment tax, attributable to the owner's share of the entity's net earnings from self-employment, by the apportionment percentage provided in ORS 314.650 through 314.675. The pass-through entity will report on the Oregon composite nonresident return the tax computed for each electing owner and total amounts for all electing owners.

(b) Credits and deductions. Below is a list of items that may or may not be allowed for electing owners. [Table not included. See ED. NOTE.]

(A) Name, address, and social security number;

(B) The state of residence; and

(C) Sufficient information to determine the amount of the credit for income taxes paid to another state allowed under ORS 316.131.

(c) Losses.

(A) Net operating losses for Oregon nonresidents are computed under ORS 316.014. A pass-through entity that has filed an Oregon composite tax return on behalf of nonresident individual owners may file amended returns to carry back the Oregon net operating losses incurred by the entity. A schedule must be attached to any return filed under these provisions indicating the taxpayers affected and calculations of the loss amounts. These losses may also be carried forward. The allowed carryback and carryforward periods (including elections to forego the carryback period) are the same as provided under Internal Revenue Code section 172. The election to forego the carryback period must be made by attaching a statement to the Oregon composite return filed on or before the due date (including extensions) of the return for the loss year.

(B) Any refund of tax made pursuant to a return filed under these provisions will be paid to the entity, regardless of changes in ownership or changes in the identity of nonresidents participating in an Oregon composite filing during the carryback or carryforward period.

(3) Election to participate in an Oregon composite tax return. The following provisions apply to electing owners:

(a) The owner must make a separate election for each tax year;

(b) The owner must not have been a resident of Oregon at any time during the owner's tax year;

(c) The owner is considered to have made the election on the date the entity files the composite return that includes the electing owner;

(d) By making the election, the owner elects to have the owner's Oregon tax liability paid and reported by the entity; and

(e) An electing owner is ultimately liable for tax, penalty and interest if the entity fails to file a composite tax return or pay the tax on behalf of the owner.

(4) Filing and payment requirements.

(a) Due date. The Oregon composite tax return is due the 15th day of the fourth month after the close of the tax year of the majority of the electing owners, in accordance with ORS 314.385.

(b) Payment of amounts due. Payment of the amount due is made by the entity on the owner's behalf and must accompany the filing of the Oregon composite tax return in accordance with ORS 314.395. The payment must include the tax due plus any penalty or interest provided by Oregon law.

(c) Extensions of time to file. If the entity is granted a federal extension of time to file the entity's return, the same extension of time applies for

filing the Oregon composite return. The entity should attach a copy of the federal extension to the back of the Oregon composite return when it is filed.

(5) Ineligibility or revoking an election to participate in a composite return.

(a) One or more owners may revoke the election to join in the Oregon composite tax return after the Oregon composite tax return is filed. The revocation of the election must be made within three years from the date the Oregon composite tax return was filed. To revoke a previous election, the owner must file a separate return with the department showing all items of income and deduction separately. This separate return will be treated as an original return and, if filed after the due date, any tax liability shown on the return is subject to interest and penalties in the same manner as any other delinquently filed original return. The decision to revoke a previous election by one or more owners has no effect on the election of the remaining owners.

(b) If any of the owners should become ineligible, revoke their election, or decline to participate in filing an Oregon composite tax return and the entity made tax payments on the owner's behalf, the department may transfer the tax payment to the account of the nonresident owner if the entity submits a written request to the department. The request must be received by the department before the entity files the Oregon composite return and before the nonresident owner files a tax return for that tax year, and must contain:

(A) The name and federal employer identification number of the entity that made the tax payment(s);

(B) The name and social security number of the nonresident owner; and

(C) The specific dollar amount to transfer to the account of the owner.

(c) An owner who does not or cannot elect to participate, or who revokes a prior election, is subject to withholding on the owner's share of the Oregon source distributive income under section (7) of this rule.

(6) Payment of tax on behalf of electing owners. An entity may be required to make quarterly tax payments to the department on behalf of all electing owners. The tax liability required to be paid is the sum of each electing owner's estimated tax liability for that quarter that is attributable to each owner's interest in the entity. In determining the electing owner's tax liability, the provisions of ORS 314.505 to 314.525 or ORS 316.579 to 316.589 regarding calculation of estimated tax apply. The entity must remit the tax payments to the department using forms and instructions provided by the department.

(7) Requirement to withhold and remit tax for nonelecting owners.

(a) Withholding requirement. A pass-through entity with Oregon-source distributive income, and one or more nonresident owners that have no other Oregon-source income, is required to withhold tax on behalf of the owner unless that owner makes an election as described in section (3) of this rule or meets an exception described in section (8) of this rule. The entity must withhold tax as follows:

(A) For nonelecting owners subject to tax under ORS Chapter 316, nine percent of each owner's share of Oregon-source distributive income for the taxable year, and

(B) For nonelecting owners subject to tax under ORS Chapter 317 or 318, 6.6 percent of each owner's share of Oregon-source distributive income for the taxable year.

(b) Reconciliation requirement. The pass-through entity must file, on or before the due date of its information return, an annual withholding report containing a calculation and reporting of the amount required to be withheld pursuant to this section. This report must be accompanied by a remittance, if any, of the excess of the annual withholding tax liability, as calculated in subsection 7(a), over the aggregate of the quarterly withholding tax amounts required to be remitted under subsection (7)(d) of this rule. The annual withholding tax report must also be accompanied by a detailed summary of the nonelecting owner's share of the aggregate estimated withholding tax payments made by the pass-through entity for the taxable year, and, if any, the nonelecting owner's share of the aggregate additional withholding tax liability paid with the annual withholding report.

(c) Information report requirement. The pass-through entity, by the due date of its information return, must provide each applicable nonelecting owner with an information statement, containing the owner's share of the entity's withholding tax payments. The owner will claim the amount of tax payments shown on the statement as estimated tax payments on the tax return the owner files.

(d) Quarterly remittance requirement. The entity must remit amounts withheld to the department, on a quarterly basis, using Oregon estimated tax payment vouchers for each nonelecting owner, or through the use of another method approved by the department. The quarterly withholding tax remittance amounts may be made using the sum of:

(A) Nine percent, multiplied by the product of 25 percent and the sum of the noncorporate nonelecting owner's share of the entity's Oregon-source distributive income for the preceding taxable year, and

(B) 6.6 percent, multiplied by the product of 25 percent and the sum of the corporate nonelecting owner's share of the entity's Oregon-source distributive income for the preceding tax year.

(8) Exceptions to withholding requirement. The entity is not required to withhold income taxes for a nonelecting owner if:

(a) The owner's share of Oregon-source distributive income from the entity is less than $1,000;

(b) The owner made estimated tax payments the prior tax year based on the owner's share of Oregon-source distributive income from the entity and continues to make estimated tax payments for the current tax year; or

(c) The owner files a signed affidavit with the department stating that the owner agrees to file the owner's Oregon income or excise tax return and make timely payments of all taxes imposed with respect to the owner's share of the Oregon income of the entity and that the owner is subject to the jurisdiction of the State of Oregon for purposes of collection of unpaid income tax, penalties, and interest. The signed affidavit must include the following information:

(A) The owner's name, address, and social security number or tax identification number (i.e. federal employer identification number or Oregon business identification number);

(B) The entity's name and tax identification number; and

(C) The entity's tax year.

(d) The entity is a publicly traded partnership, as defined in Internal Revenue Code section 7704(b), that:

(A) Is treated as a partnership for federal tax purposes; and

(B) Files an annual information report including the nonresident's name, address, social security number or taxpayer identification number, ownership percentage, and share of the federal income.

[Publications: Publications referenced are available from the agency.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 2005 OL, Ch. 387
Stats. Implemented: 2005 OL, Ch. 387
Hist.: REV 3-2005, f. 12-30-05, cert. ef 1-1-06

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Adm. Order No.: REV 4-2005
Filed with Sec. of State: 12-30-2005
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Rules Renumbered: 150-314.385(1)-(D) to 150-314.385(3), 150-314.415(1)(b)-(A) to 150-314.415(2)(b)-(A), 150-314.415(1)(b)-(B) to 150-314.415(2)(b)-(B), 150-314.415(1)(e)-(A) to 150-314.415(2)(f)-(A), 150-314.415(1)(e)-(B) to 150-314.415(2)(f)-(B), 150-314.415(4)(a) to 150-314.415(5)(a), 150-314.415(5) to 150-314.415(6), 150-314.415(7) to 150-314.415(8)
Subject: The Department of Revenue uses administrative rule numbering that corresponds to the relating Oregon Revised Statute. The 2005 legislature enacted changes to ORS 314.385 and ORS 314.415 that resulted in changes to the numbering of subsections within those statutes. The department is renumbering the related rules to correspond to those statutory changes. No substantive changes were made to the rules.
Rules Coordinator: Durinda Goodwin—(503) 947-2099

150-314.385(3)
Standards for Substitute Tax Forms; Treatment of Forms Not Meeting the Standards; Treatment of Payments Received With Forms Not Meeting the Standards

(1) Definitions. For purposes of this rule:

(a) Official form. An official form is any payroll, income, or excise tax form prepared, printed, and distributed by or on behalf of the department pursuant to Oregon Revised Statutes (ORS) Chapters 310, 314, 315, 316, 317, 318, Lane Transit District (LTD) Ordinance 38, and Tri-County Metropolitan Transportation District (TRIMET) Ordinance 92.

(b) Substitute form. A substitute form is any payroll, income, or excise tax form authorized under ORS Chapters 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92 that is intended to replace the official form.

(c) Tax Return. A tax return is a payroll, income, or excise tax form filed with the department by or on behalf of a taxpayer under the provisions of ORS Chapter 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92.

(2) A tax return must be made on the department-prescribed forms, which may be obtained upon request from the department. Such forms are

widely distributed, but a failure to receive any forms does not relieve the taxpayer from the responsibility to file any return required by statute.

(3) The department may accept a substitute form filed in lieu of an official form if the substitute form meets the standards set forth in this rule. It is the intent of the department to follow the National Association of Computerized Tax Processors (NACTP) standards as closely as is practical.

(4) Substitute form standards. A substitute form with or without optical character readable (OCR) scan lines must be a duplicate of the official form unless the variation is within the exceptions listed in section (5) of this rule. The overall format of substitute forms must match the format of official forms. Overall format includes graphics, location of lines, boxes, data entry symbols, spacing, and OCR scan line.

(a) A substitute form must be on paper of the same overall dimension (size) and weight and of a quality equal to or better than that used for the official form.

(b) Substitute forms and the filled-in data must be legible and must not have extra text or marks which do not appear on the official forms.

(c) The social security number on substitute forms must be separated by hyphens after the third and fifth digits.

(d) If the substitute form has OCR scan lines, black nonreflective ink in OCR-A font must be used for printing the scan line.

(5) Exceptions. The substitute form may differ from the official form with respect to the exceptions listed in this section. However, the difference may delay processing of the tax return.

(a) Official forms which are printed on colored paper may be reproduced in black ink on white paper.

(b) Official forms which use both sides of the paper may be reproduced on one side only of two successive pages.

(c) Reproductions of the data entry symbols may vary in size from that of the data entry symbols on the official form if the symbols conform to the following specifications:

(A) The data entry dot must be a filled circle (•) at least 1/16 inch in diameter and no larger than 1/8 inch in diameter centered vertically on the text line;

(B) The data entry symbols must not obstruct or overlap line numbers or captions; and

(C) The data entry symbols must be printed on the substitute form in the same position relative to the information to be data-entered as on the official form.

(d) All text on the official form which is larger in size than 14 point print may be reproduced on the substitute form in 14 point print.

(e) The boxes (data entry areas) printed on the official form for entry of the filled-in data may be reproduced on the substitute form without a vertical line provided to divide the dollar amount from the cents amount.

(6) Photocopies of official forms may be filed if the official form does not contain OCR printing.

(7)(a) Substitute forms must be approved by the department prior to use. Substitute forms which do not meet the requirements of this rule may not be filed in lieu of the official forms. The department may reject and return to the taxpayer tax returns using substitute forms which do not meet the requirements of this rule.

(b) A tax return which has been rejected under this rule does not meet the filing requirement of the applicable program. The taxpayer must file a tax return using an official form or a substitute form which meets the requirements of this rule in order to meet the filing requirement under the provisions of the personal income tax, corporate income tax and corporate excise tax programs; the filing requirement under the TRIMET self-employment tax and LTD programs; the filing requirement under ORS 314.724 for partnership returns; or the filing requirement under the Elderly Rental Assistance program. If the return is rejected, the taxpayer may be assessed penalty for failure to file a tax return as provided under ORS 314.400, 314.724 or as otherwise provided under Oregon law.

(8) If the department receives payment with a substitute form which does not meet the requirements of this rule, the department will treat the payment as an estimated tax payment under the provisions of ORS Chapters 314 or 316.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.385
Hist.: RD 9-1987(Temp), f. & cert. ef. 7-8-87; RD 11-1987, f. & cert. ef. 11-1-87; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 1-2005, f. 6-27-05, cert. ef. 6-30-05; Renumbered from 150-314.385(1)-(D), Rev 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(2)(b)-(A)
Refunds

(1) The return of the taxpayer, filed timely and in the prescribed manner, constitutes a claim for refund under the provisions of this section. For the purpose of determining when the three-year period for claiming a refund expires, the due date of a return is the statutory due date, not the due date after extension.

(2) The department will refund the excess tax paid whenever the review required by statute is completed, even if the date of refund is more than three years after the due date of the return.

Example 1: Simon filed his 1999 Oregon personal income tax return on April 1, 2003, requesting a refund. The department reviewed and processed the return in mid-May of that year. Although the refund payment would be outside the three year statute for refunds, the department can make the payment because Simon filed his return within the statute of limitations period.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 1-69; 11-71; 12-31-83, Renumbered from 150-316.192 to 150-314.415(1)(b); 12-31-85, Renumbered from 150-314.415(1)(b); RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; Renumbered from 150-314.415(1)(c) by REV 4-2003, f. & cert. ef. 12-31-03; Renumbered from 150-314.415(1)(b)-(A), Rev 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(2)(b)-(B)
Minimum Check Amount

(1) The department is prohibited by statute from issuing refunds of less than the minimum allowed by ORS 314.415 after reduction for amounts owed. The department will not apply a refund less than the minimum to a subsequent year's estimated tax account or to a charitable checkoff.

(2) Refunds from all tax programs may be offset against delinquent accounts as specified in OAR 150-314.415(2)(f)–(B). Refunds of money received for miscellaneous purposes, such as photocopies of returns, purchase of publications, etc., may be offset against delinquent accounts if the refund is more than $10.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 10-5-83, 12-31-85, Renumbered from 150-314.415(1)(d)-(C); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-314.415(1)(b) by REV 4-2003, f. & cert. ef. 12-31-03; Renumbered from 150-314.415(1)(b)-(B), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(2)(f)-(A)
Interest Computation — Offset

(1) An overpayment of any tax imposed and interest on the overpayment, if any, shall be offset against any tax, penalty, or interest then due from the taxpayer. "Tax, penalty or interest then due from the taxpayer" means any amount of tax that has been assessed before the date the refund is applied or proposed to be applied and any penalty or interest incurred in connection with the tax.

(2) If a Notice of Assessment is issued, the department shall make the offset on the date the refund is issued.

(3) If a Notice of Deficiency is issued, the department may offset upon receiving written authorization from the taxpayer. If the taxpayer submits a written authorization to offset, the authorization shall include the taxpayer's name, social security number or other identifying number, current address, accounts (if known), and the signature of the taxpayer. The date on which the offset shall be made is the date that either a net billing or a refund is issued, or the date a payment is received, whichever is earlier.

Example 1: On February 15, 1985 it was determined that a taxpayer had overpaid the 1982 tax by $500 and underpaid the 1983 tax by $800. Assume the underpaid account had not yet been assessed and on March 15, 1985 the department received a written authorization allowing the department to offset the refund to the nonassessed account. The net amount due from the taxpayer on April 15, 1985, the date the net billing is issued, is calculated as follows: [Figures not included. See ED. NOTE.]

(4) For deficiencies on refunds issued under ORS 310.630 to ORS 310.690, the department shall refund any penalty and interest, due to an offset of a refund, when it has been determined that the deficiency was not legally due. Interest shall be computed on the amount that was offset. This includes penalty and interest not legally due. The interest starting date is the date the offset was made.

Example 4: An individual files a Homeowner and Renter Refund claim and a check is issued. Six months later, the department audits the refund claim and issues a Notice of Deficiency. The individual files an income tax return for which a refund is issued. The individual requests the department to offset the income tax refund to pay the deficiency plus interest. The deficiency is later determined to be erroneous. The amount of total offset shall be refunded. Interest is computed on the entire amount beginning on the date the deficiency was offset.

Example 5: Assume the same facts in Example 1 except that the Notice of Deficiency is assessed and a 5 percent penalty is imposed. The amount of the refund, penalty and interest offset shall be refunded and interest is computed on the entire amount beginning on the date the assessed account was offset.

(5) Special Cases. Offsets applied to deficiencies issued for tax years beginning after December 31, 1984, and prior to January 1, 1986 for which the taxpayer has made the election as prescribed under OAR 150-316.021(1)(b) shall be applied in the following order:

(a) First, to penalty and interest due on such return;

(b) Second, the amount of tax due as prescribed under OAR 150-316.021(1)(b).

(c) Third, to the balance of tax due for the tax year. When the combined report method is required, penalty and interest under ORS 314.395 to

314.415 will be computed on the separate tax liability, or overpayment of each taxpayer included in the unitary group. There shall be no offsets of overpayments and deficiencies between taxpayers in the group prior to computing penalty and interest. After computation of penalty and interest, an offset may be made by the department upon receiving written authorization from the taxpayers, given the statute of limitations has not expired.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 10-5-83, 12-31-83; 12-31-85; 12-31-87, Renumbered from 150-314.415(1)(d)-(A); RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; Renumbered from 150-314.415(1)(e)-(A), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(2)(f)-(B)
Refund Offset Priority

(1) Definitions for purposes of this rule.

(a) Unrestricted accounts. An account assigned by a state agency which is collected by use of all Department of Revenue resources available.

(b) Appropriation accounts. An account that is established by an appropriation of the state legislature.

(c) Nonassessed accounts. The deficiency tax account amount by which the tax as correctly computed exceeds the tax, if any, reported by the taxpayer.

(d) Assessed accounts. The tax account that has not been appealed or paid and a written notice of assessment stating the amount so assessed has been sent to the taxpayer.

(e) Oldest account. The oldest account is an account with the earliest set-up date. If more than one account has the same set-up date, the earliest tax year is the oldest account. “Set-up date” means the date the account was established or created.

(2) The department will offset a refund to assessed accounts.The department may also offset a refund to nonassessed accounts when the taxpayer sends the department a written authorization to offset the refund. Offsets will be made using the following guidelines:

(a) First, offset to the oldest account within the program that has the refund.

(b) Second, offset to other programs, oldest account first, following the priorities shown in section (4) below.

(3) A taxpayer’s refund will be offset only to accounts owed by that taxpayer. An individual refund will not be offset to a corporate account nor a corporate refund offset to accounts of a subsidiary.

(4) The priority criteria is:

(a) Funds due the general fund excluding funds due other state of Oregon agencies. This includes all revenue from the cigarette and amusement device tax which is allocated part to the general fund and part to local governments.

(b) Funds due an appropriation account which will revert to the general fund.

(c) Funds due a state of Oregon tax program for distribution to local governments.

(d) Funds due other state of Oregon agencies.

(e) Funds due local jurisdictions for which the department collects under ORS 293.250.

(f) Funds due entities which serve a garnishment or levy on the Department of Revenue.

(g) Funds due charitable check-off programs designated by the taxpayer in lieu of receiving a refund check.

(5) If the refund balance as adjusted by the department in processing and after offset is insufficient to pay the designated charitable check-off contributions in full, payment will be prorated. The proration will be the ratio of the designated contribution to a specific fund divided by the total contribution to all funds.

(6) State tax refunds will not be offset to accounts for TriMet Transportation District or the Lane Transit District without the written permission of the taxpayer. Refunds from these programs will be offset to accounts within the same program but not to an account for a different local tax program.

(7) Delinquent senior citizen deferral accounts are part of the offset program. This includes the property tax and special assessment deferrals.

Example: A taxpayer has a personal income tax refund due for the year. The amount of the refund owed is $200. The taxpayer also has two liability accounts. The taxpayer owes $100 to the Department of Revenue on an assessed personal income tax account for the previous year. The Taxpayer also owes $300 to the Department of Education. This is how the offset to the refund would look: [Table not included. See ED. NOTE.]

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 10-5-83, 12-31-83; 12-31-85, Renumbered from 150-314.415(1)(d)-(B); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; REV 2-2003, f. & cert. ef. 7-31-03; Renumbered from 150-314.415(1)(e)-(B), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(5)(a)
Refunds; Net Operating Loss and Net Capital Loss Carryback Claims

(1) Application. For purposes of this rule, provisions applying to individuals shall also apply to estates and trusts.

(2) Extended period for refund claim.

(a) A special period of limitations is provided under ORS 314.415(5)(a) to claim a refund or credit attributable to an individual net operating loss or corporation net capital loss carryback. A refund claim for an individual net operating loss or corporation net capital loss carryback year may be filed within three years from the due date (including extensions) of the taxable year of the net operating loss or net capital loss which results in the carryback.

Example 1: Edward filed his 1993, 1994, and 1995 returns by their respective due dates. On March 15, 1998, Edward filed his 1996 return on which he claimed a net operating loss. The refund claims for the carryback years (1993, 1994, and 1995) must be filed by April 17, 2000, three years after the due date of the 1996 net operating loss year return.

(b) The provision allowing refunds of tax within two years of the date of payment is not extended.

Example 2: Assume the same facts as in Example 1 except that the original 1996 return was not filed until March 15, 2000, was filed as a paid return and did not claim a net operating loss. On June 15, 2000, Edward filed an amended return (refund claim) for 1996 to claim an additional business expense. The amended return creates a net operating loss for 1996. Edward is allowed a refund for the 1996 taxes paid within the two years preceding his refund claim. Refund claims for the net operating loss carryback years 1993, 1994, and 1995) must have been filed by April 17, 2000, three years after the due date of the 1996 net operating loss year return. The date of filing of the net operating loss claim (June 15, 2000) does not extend the date of filing of the refund claims for the carryback years beyond the three-year period.

(3) Carryback periods for individuals.

(a) In the case of an individual taxpayer’s net operating loss for a tax year beginning before August 6, 1997, the net operating loss carryback period is generally three years and the carryforward period is fifteen years.

(b) For tax years beginning on or after August 6, 1997, the carryback period is generally two years and the carryover period is twenty years.

(c) For tax years beginning on or after January 1, 1998, a five year carryback period is allowed to claim a refund or credit attributable to a net operating loss for a farming business.

Example 3: John, a farmer, filed his 1993 through 1997 returns by their respective due dates. On March 15, 1999 John filed his 1998 return on which he claimed a net operating loss. The net operating loss may be carried back to the prior five tax years (1993, 1994, 1995, 1996 and 1997).

(4) Limitations on credit or refund.

(a) If a claim for a credit or refund is based on an overpayment attributable to an individual net operating loss or corporation net capital loss carryback, the credit or refund may exceed the amount of tax paid within three years of when the return was filed or within two years immediately preceding the filing of the claim but only to the extent the overpayment is attributable to the net operating loss or net capital loss carryback.

Example 4: Jake amended his timely filed 1995 return November 1, 1999 to claim a refund for a carryback arising from a 1996 net operating loss. In addition to reducing income for the net operating loss carryback, Jake claimed a subtraction for U.S. government interest and an additional exemption credit. The refund claim is limited to the portion of the overpayment attributable to the net operating loss carryback. The subtraction for interest and the additional exemption credit are outlawed by the period of limitations under ORS 314.415(2).

(b) If a claim for a credit or refund is based not only on an overpayment attributable to an individual net operating loss or corporation net capital loss carryback, but also on other items, the credit or refund shall not exceed the sum of:

(A) The amount of the overpayment attributable to the individual net operating loss or corporation net capital loss carryback, and

(B) The balance of such overpayment not to exceed the amount of taxes paid within the periods provided in ORS 314.415(1)(b).

Example 5: Assume the same facts as in Example 4 except that Jake paid additional tax for the 1995 taxable year on May 1, 1998. He may receive a refund for any overpayment of taxes attributable to the net operating loss carryback plus any remaining balance of overpayment, but not in excess of the amount of any taxes paid for 1995 during the two years immediately preceding November 1, 1999, the date the claim was filed.

(c) Delinquent returns If a taxpayer filed an original return after the three-year period for requesting a refund provided in ORS 314.415(1)(b), but amends the same return for an individual net operating or corporation net capital loss carryback within the period allowed by ORS 314.415(4)(a), a refund will be allowed. The refund will be limited to the amount of net tax liability shown on the original return. Any additional refund requested on the amended return is barred by ORS 314.415(1)(b).

Example 6: Chuck files his 1998 return on September 30, 2002, more than three years beyond the original due date of the return. His return showed tax liability of $500 and he requested a refund of $300 for overpayment of estimated tax. The refund was denied based on ORS 314.415(1)(b). On October 15, 2002, Chuck filed an amended 1998 return carrying back a 2000 net operating loss. Chuck requests a refund of $800 since he filed within the additional three-year period allowed by ORS 314.415(4)(a). Chuck will receive a refund of $500 which is attributable to the net operating loss carryback. The additional $300 refund is not allowable based on ORS 314.415(1)(b).

(5) Treatment of carryover amounts.

(a) Although refunds for NOL years and/or individual net operating loss or corporation net capital loss carryback years may be closed or limited under ORS 314.415 and this rule, the balance of any individual NOL or corporation net capital loss carryover amounts not fully absorbed in carryback years may be used in the computation of Oregon taxable income for all applicable carryover years to the same extent includable for federal.

Example 7: Jay filed his original 1993 return showing a net operating loss of $20,000 on July 1, 1999. Refunds for the carryback years 1990, 1991 and 1992 and the carryforward years of 1994 and 1995 are barred by the statute of limitations. However, any portion of the net operating loss deduction not fully absorbed in those years may be used to determine Oregon taxable income for 1996 and later years in accordance with ORS 316.014 and the rules pertaining thereto. The limitation of the refunds for the closed years will not limit the carryover amounts to be used in subsequent years.

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

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-314.415(4)(a), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(6)
Effect of Federal Extension of Period for Assessment

If a taxpayer and the Commissioner of Internal Revenue enter into an agreement, or renewal thereof, extending the period of time for giving notices of deficiencies and assessing deficiencies of federal income tax for tax years beginning on or after January 1, 1969, the period within which a refund claim may be filed or a refund allowed if no claim is filed shall be within the limits set forth in subsections (1) to (5) of ORS 314.415 or within six months from the expiration date of the federal agreement, whichever period expires the later.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 11-71; 12-31-77; Renumbered from 150-314.415(5), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(8)
Refunds of Tax Overpayments to Spouse or Heirs

(1) For deaths which occur on or after September 9, 1995: Upon the death of a taxpayer entitled to a refund not in excess of $10,000, when the estate is not probated, refunds may be made to survivors by classes upon filing acceptable affidavits, in the following order of precedence: Surviving spouse; the trustee of a revocable inter vivos trust; children, and issue of a deceased child by right of representation (the grandchildren dividing share and share alike what their deceased parent would have taken if alive); parents; brothers and sisters; nephews and nieces. If a small estate affidavit is filed, a refund may be made in the amount of the difference between the value of other personal property in the small estate and $50,000. See ORS 114.515, 293.490 to 293.500.

(2) For deaths which occur prior to September 9, 1995: The refund limitation amount is $1,000 or less, and trustees are not allowed to claim the refund.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 1-69; 11-73; 12-31-84, Renumbered from 150-316.192(2)-(B); 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; Renumbered from 150-314.415(7), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: REV 5-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 9-1-05
Rules Amended: 150-305.220(1), 150-305.220(2)
Subject: These rules are being amended to adjust the interest rate charged on deficiencies and paid on refunds by the Department of Revenue.
Rules Coordinator: Durinda Goodwin—(503) 947-2099

150-305.220(1)
Computation of Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2006, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of .5833 percent per month (7 percent annually). For a fraction of a month, interest will be computed at .0192 percent per day.

(2) Interest starting date. The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due from taxpayers on deficiencies and delinquencies. [Table not included. See ED. NOTE.]

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100 & 305.220(3)(a)
Stats. Implemented: ORS 305.220
Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06

150-305.220(2)
Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2006, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of .5833 percent per month (7 percent annually). For a fraction of a month, interest will be computed at .0192 percent per day.

(2) Interest starting date. The interest starting date will be 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is later.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365 day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate will be the same as the interest rate on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100 & 305.220(3)(a)
Stats. Implemented: ORS 305.220
Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16. Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: REV 6-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 150-316.162(2)(j)
Subject: The rule is amended to conform to legislative changes in Oregon Laws 2005, chapter 533, relating to the definition of an "independent contractor" for tax purposes.
Rules Coordinator: Durinda Goodwin—(503) 947-2099

150-316.162(2)(j)
Independent Contractor Definition

(1) As used in the various provisions of ORS Chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met.

(2) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Department of Consumer and Business Services, and Department of Revenue of the State of Oregon, under the authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.162

Hist.: RD 7-1992, f. & cert. ef. 12-29-92; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 6-2005, f. 12-30-05, cert. ef. 1-1-06

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Adm. Order No.: REV 7-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Adopted: 150-306.132, 150-306.135, 150-308.242(3)
Rules Amended: 150-308.865, 150-321.706(2)
Rules Repealed: 150-308.865.4
Rules Renumbered: 150-311.507 to 150-311.507(1)(d)
Subject: OAR 150-306.132 is adopted to reflect 1999 legislation creating the Oregon Land Information System (OLIS) Fund to help fund the creation of a statewide base map system as a tool in administering the property tax system. This rule clarifies the OLIS fund source, the use and distribution of the fund, and the process that counties use when applying for grant awards from the fund. The rule provides for the implementation of the Oregon Map (ORMAP) project as the program that supports OLIS priorities.

OAR 150-306.135 clarifies and explains the role of Oregon Land Information System (OLIS) Advisory Committee in relationship to the Department of Revenue's responsibility for the Oregon Map (ORMAP) project. The rule provides guidelines for OLIS Advisory Committee membership, terms of office, frequency of meetings, and manner of voting.

OAR 150-308.242(3) clarifies the stipulation process described in ORS 308.242 and ORS 309.110.

OAR 150-308.865 conforms the rule to revisions of statutes and deletes reference to a form no longer in use. The responsibility to issue trip permits for manufactured structures has shifted from Division of Motor Vehicles to the Department of Consumer & Business Services. The purpose of the rule remains to describe actions of the tax collector to release the lien on the portion of a property that is no longer real property.

OAR 150-321.706(2) requires all owners of forestland to sign application for Small Tract Forestland option and defines required signatures for various entities.

OAR 150-308.865(4) is repealed as it is outdated and no longer follows statute.

OAR 150-311.507(1)(d) reflects legislative changes enacted in 2001 and 2003 that changed the process for adding property values that had been omitted to the certified property tax roll. Some statutes were renumbered as part of those changes. The proposed amendment to the rule matches it to current law and is more consistent with existing practice by the assessors.
Rules Coordinator: Durinda Goodwin—(503) 947-2099

150-306.132
Oregon Land Information System Fund and the Oregon Map Project

(1) Definitions:

(a) "Fund" means the Oregon Land Information System (OLIS) Fund. The fund provides financial support for the Oregon Map (ORMAP) project. The fund is separate from the state's General Fund. The fund's source is an allocated dollar amount received quarterly from each county's collected document-recording fees, as provided by ORS 205.323(3)(a).

(b) "Department" means the Oregon Department of Revenue.

(c) "Director" means the director of the Oregon Department of Revenue.

(d) "Grant" means a money award from the OLIS Fund.

(e) "Oregon Land Information System Advisory Committee" (OLIS Advisory Committee) is a team of individuals appointed by the department's director. The committee is comprised of ORMAP stakeholders in private industry, and leaders in federal, state, or local government who have an interest in the success of the program.

(f) "Oregon Map" (ORMAP) project means the program implemented and authorized by the department to establish a statewide base map for facilitating and improving Oregon's property tax mapping system and for providing other Geographic Information System (GIS) benefits, pursuant to Oregon Revised Statute (ORS) 306.132 and 306.135.

(g) "ORMAP Technical Group" (Technical Group) is comprised of volunteers who have education or experience in surveying, cadastral cartography, legal descriptions, mapping software, database software, and other GIS technology. The group provides evaluation and recommendations of individual county project grant applications to the department and the OLIS Advisory Committee.

(h) "Project" means a mapping activity that is eligible for financial assistance from the fund.

(2) The department administers the fund in coordination with the ORMAP program goals. The fund makes the following disbursements:

(a) Approved ORMAP grants for project deliverables, equipment, and software.

(b) Quarterly payments for ORMAP administrative costs to the department. Administrative costs include but are not limited to, personnel, equipment, and other services and supplies required in completing the program goals.

(3) The ORMAP grant program provides financial help to counties in the development of a statewide base map system. There are two types of grants, a project grant and a grant to request the purchase of approved equipment or software. The grant process provides a fair, reasonable, nondiscriminatory, and orderly method to distribute OLIS funds to counties. All requests for money must follow the grant program process.

(4) The department adopts priorities for funding specific projects, goals, or geographic areas in support of ORMAP. A county's grant request must adhere to the department's priorities, ORMAP technical standards, and the county's business plan for achieving ORMAP goals.

(5) The department must receive grant requests on the application form prescribed by the department. Applications are available on the ORMAP Web site. (www.ormap.org)

(a) The department accepts grant applications for the purchase of approved equipment and software at any time.

(b) Counties may only submit project grant applications during department approved grant cycles. To consider a project grant request the department must receive the application by the due date published on the ORMAP Web site. Project grant applications must contain the following information:

(A) Name, address, and telephone number of the project contact person and the person responsible for the fiscal administration of the project.

(B) Description of the issue the project addresses: the project plan, project benefits, and a description of how the project helps the county achieve its goals and ORMAP goals.

(C) Total project budget including monitoring and ongoing maintenance of the project deliverables. The request must identify all sources of funding for the project, the amount of funding from each source, and the total amount of funding requested from the fund.

(D) Description of the type and duration of project work outsourced to contractors, and estimated cost of the work.

(E) Time line and schedule of deliverables for the project, including the expected project start date and the completion date.

(F) Plan to monitor and evaluate project results including identification of the responsible parties.

(G) County assessor's or a representative of the assessor's signature.

(6) The grant review process is as follows:

(a) The department receives all grant applications and performs an initial review of requests for timeliness and completeness, at which time the Department may suggest changes before posting to the Technical Group.

(b) When the department receives a grant request to purchase approved equipment and software, it will make an award determination.

(c) The grant review process for projects is as follows:

(A) The department submits each county project grant application to the Technical Group for review. The county project representative must attend the Technical Group's review in person or by telephone conference to share project details and answer questions. The Technical Group may ask the representative to provide additional information about the project.

(B) The Technical Group convenes additional meetings as necessary to review project applications and project addendums.

(C) The Technical Group develops a recommendation for each project grant application to the department.

(D) The department reviews the Technical Group's grant recommendations, the health of the fund, and the individual project proposals to ensure that they are compatible with the county ORMAP business plans and that the plans comply with the statewide ORMAP priorities and goals.

(7) The department makes the project grant award determination.

(a) The department may defer awarding a grant until the OLIS Advisory Committee reviews the project and makes a recommendation.

(b) The department may deny funding or approve partial or full funding of a grant based on the grant review.

(c) The department notifies each grant requestor of the final grant determination and award by letter within two weeks from announcing the award determinations to the OLIS Advisory Committee.

(d) The department will consider appeals of grant decisions. Appeals must be submitted in writing to the department within 30 days from the action that is being appealed. The department's decision on an appeal is final.

(8) The department and the grant award recipient must execute an ORMAP Intergovernmental Agreement prior to the disbursement of OLIS funds.

(9) The department must review and approve all documentation of completed project deliverables before approving the payment of OLIS funds to grant recipients.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.132
Hist.: REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-306.135
Statewide Base Map System and the Oregon Land Information System Advisory Committee Role, Membership and Meetings

(1) The department is responsible to establish and deliver the Oregon Map (ORMAP) project pursuant to ORS 306.132 and 306.135. The ORMAP project creates an accessible statewide base map system to assist with and improve the administration of Oregon's property tax system.

(2) The role of the Oregon Land Information System (OLIS) Advisory Committee is to provide advice and support to the department in the development and implementation of ORMAP's administrative and technical needs. The committee has the authority to submit recommendations to the department concerning ORMAP and related project proposals. The advice and support that the committee provides to the department includes, but is not limited to:

(a) Assisting the department in developing the statewide goals and priorities for ORMAP.

(b) Assisting and providing advice to the department in setting statewide mapping and Geographical Information System (GIS) standards for ORMAP.

(c) Providing review of the Oregon Land Information System Fund and giving assistance in the development of fair and equitable fund distribution processes and policies for ORMAP projects.

(d) Support by communicating ORMAP information and goals to citizens and interested groups within the state and local communities.

(3) The Advisory Committee is composed of not more than 15 individuals appointed by the department's director. Members of the committee include ORMAP stakeholders from private industry, and federal, state, or local government leaders with an interest in the success of the project.

(a) Committee members serve at the pleasure of the director. Each Advisory Committee member serves a two-year term with an opportunity to continue for multiple terms. Committee member terms are staggered to allow for sufficient committee membership coverage; terms begin July 1 and end June 30.

(b) In the event of a vacancy, the director appoints another member to serve the duration of the term.

(c) Upon expiration of a term, a committee member may serve until the appointment of a successor. Members reaching the end of their two-year term may remain on the committee, if they request and receive approval from the director.

(d) Advisory Committee members serve without compensation for travel or per diem.

(4) The Advisory Committee must adhere to the Oregon Public Meetings Laws, ORS 192.610 -192.690.

(a) The Advisory Committee meets a minimum of twice per year at the request of the director to review ORMAP policies, proposals, and practices.

(b) The director, or a department employee designated by the director, presides as the Advisory Committee chair at all meetings.

(c) Advisory Committee members and any other organization or person who expresses interest in Advisory Committee meetings will receive meeting agendas, and study notes prepared by the department's ORMAP staff, before the meeting dates.

(d) Advisory Committee members or other interested parties with additional agenda items must request an agenda revision from the ORMAP staff to add the item and receive meeting time in which to present the item.

(e) Decisions are made by a consensus of the committee members.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.135
Hist.: REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-308.242(3)
Stipulation Procedures

(1) The phrase "the convening of the board" in ORS 308.242 (3)(b) means the first meeting of the year during which the Board of Property Tax Appeals (BOPTA) officially opens the session under ORS 309.026.

(2) The assessor may change the roll after December 31 and without an order of the board when:

(a) A petition is filed with BOPTA under ORS 309.100;

(b) The assessor and the petitioner sign a stipulation that specifies a reduction in value prior to the date the board convenes as required by ORS 309.110 (2); and

(c) The stipulation is delivered to the clerk of the board prior to the time the board convenes.

Stat. Auth.: ORS 305.100, 305.102
Stats. Implemented: ORS 308.242, 309.110
Hist.: REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-308.865
Payment of Taxes on Manufactured Structure That Allows Change from Real Property to Personal Property Status

When a manufactured structure that is currently assessed as real property under ORS 308.875 is being moved, the tax collector must allocate the taxes between the manufactured structure and the remainder of the property. The full payment of the taxes on the value attributable to the manufactured structure releases the manufactured structure from the property tax lien.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.865
Hist.: RD 5-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-321.706(2)
Required Signatures for Small Tract Forestland Application

(1) Small Tract Forestland applications must be signed by all owners, as defined by OAR 150-321.706, that hold the land that is the subject of the application in common ownership, as defined in ORS 321.700(1).

(2) Acceptable signatures of the forestland owner(s) are as follows:

(a) For an individual, every person with an ownership interest must sign. If applicable, a person with legal guardianship or power of attorney to represent an individual may sign.

(b) For a partnership, a general partner designated by the partnership as authorized to represent the partnership.

(c) For an S corporation, a shareholder designated by the S corporation as authorized to represent the S corporation.

(d) For an estate or trust, the trustee, executor, or other authorized representative.

(e) For a C corporation, an officer of the corporation authorized to represent the C corporation.

(f) For a limited liability company (LLC) or limited liability partnership (LLP), a member designated by the LLC or LLP as authorized to represent the LLC or LLP.

(3) A contract purchaser(s) may sign if they have authority to make the application under the terms of the purchase contract.

Stat. Auth.: ORS 305.100, 321.609
Stats. Implemented: ORS 321.706(2)
Hist.: REV 4-2004, f. 7-30-04 cert. ef. 7-31-04; REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-311.507(1)(d)
Discount on Taxes as a Result of Addition of Current Year Value under ORS 311.208

(1) When value is added to the roll under ORS 311.208 any additional taxes due are eligible for the discount allowed under ORS 311.507 if paid on or before the 15th of the month next following the month billed.

(2) Discount must be allowed on the payment of taxes resulting from additional value added to the current assessment and tax roll if the payment is sufficient to pay all outstanding taxes on the account plus the tax resulting from the additional value.

(a) A 3 percent discount is allowed on the entire additional property tax amount if it is paid on or before the 15th of the month following the month of the correction.

(b) A 2 percent discount is allowed on two-thirds of the additional property tax amount if it is paid on or before the 15th of the month following the month of the correction. The remaining one-third amount is due on or before the May trimester due date; otherwise interest will accrue on the balance due as specified in ORS 311.208.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.507
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; Renumbered from 150-311.507, REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

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Department of State Lands
Chapter 141

Adm. Order No.: DSL 5-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-3-06
Notice Publication Date: 11-1-05

Rules Amended: 141-089-0105, 141-089-0110, 141-089-0115, 141-089-0120, 141-089-0130, 141-089-0145, 141-089-0150, 141-089-0155, 141-089-0165, 141-089-0170, 141-089-0175, 141-089-0180, 141-089-0185, 141-089-0190, 141-089-0200, 141-089-0220, 141-089-0225, 141-089-0230, 141-089-0240, 141-089-0250, 141-089-0255, 141-089-0265, 141-089-0275, 141-089-0295, 141-089-0300, 141-089-0310, 141-089-0415, 141-089-0420, 141-089-0430, 141-089-0520, 141-089-0530, 141-089-0555, 141-089-0560, 141-089-0565, 141-089-0570, 141-089-0580, 141-089-0595, 141-089-0600, 141-089-0605, 141-089-0615

Subject: Amendments to these rules are proposed to clarify rule language and to revise and update General Authorizations (GA's) that are set to expire at the end of this year.

The rules in OAR 141-089 have been in effect for 1 1/2 to 5 years. Some housekeeping and minor changes to procedures are needed as a result of lessons learned during implementation.

Also, the current water quality standards and conditions in OAR 141-089, especially those concerning turbidity, were revised to be consistent with DEQ requirements.

Rules Coordinator: Nicole Kielsmeier—(503) 378-3805, ext. 239

141-089-0105
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the sole purpose of improving habitat conditions for fish;

(b) Consist of fill or removal of material as:

(A) Randomly placed rock;

(B) Deflectors;

(C) Rock and log weirs;

(D) Gravel placement;

(E) Pool and pond construction;

(F) Back/side channel construction;

(G) Channel reconstruction;

(H) Barrier removal and placement of fish passage ways;

(I) Woody material.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements;

(b) The project is not for the sole purpose of improving habitat conditions for fish or other aquatic habitat restoration in wetlands; or

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085; except as provided for in OAR 141-089-0205 Wetland Restoration and Enhancement.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0110
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) Be consistent with the *Oregon Aquatic Habitat Restoration and Enhancement Guide*.

(2) Demonstrate consistency with the Oregon Department of Fish and Wildlife's requirements under ORS 509.580 to 509.645 for upstream and downstream fish passage.

(3) Fills shall be of a size appropriate to the stream, and not exceed 150 cubic yards per site unless otherwise recommended by the Oregon Department of Fish and Wildlife for purposes of providing or improving fish passage (e.g., a simulated stream bottom or reconstructed channel). For purposes of this general authorization, a site can be a single location of the entire project or a component of a project with multiple elements and geographic locations.

(4) Channel reconstruction projects shall restore pre-channelized morphology to channelized streams by providing for sinuosity and width/depth ratios that emulate the natural stream channel, as practicable.

(5) In order to stabilize deflectors, log weirs and other similar structures, the bed and the bank may be stabilized with nonstructural methods or riprap not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site.

(6) Rock and log weirs and full-spanning boulder weirs may be placed within the bed and banks only if they promote fish passage, prevent streambed degradation and/or recruit spawning gravel and do not require annual reconstruction. Weirs must incorporate a keystone rock or rocks that allow for juvenile fish passage at all flows.

(7) Deflectors may be placed only if they add stream structure and increase habitat complexity.

(8) Clean, river-run gravel used for enhancing or improving spawning areas must come from within the same river system as the placement site and not exceed 100 cubic yards per site.

(9) Pools and ponds shall be designed to allow fish to escape during low water periods. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds, so long as pool depth does not exceed the depth of adjacent pools.

(10) Gravel and bed materials may be removed to create or clear side or back channels.

(11) Artificial barriers to fish passage including but not limited to culverts, tidegates and road crossings (not exempt from the removal-fill law under OAR 141-085-0020) may be removed and fish passage structures may be placed within the bed and banks of waters of the state.

(12) The project may convert wetlands to other waters if the project approximates or restores fish habitat lost by past land use activities. The project shall have only minimal adverse impacts to wetlands.

(13) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless exempt) in accordance with OAR 141-100.

(14) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04;

141-089-0115
Application Requirements; Public Notice Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0120
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall demonstrate that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (< 2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall obtain a water right or reservoir permit, if needed, from the Oregon Department of Water Resources if the project involves a water diversion or impoundment.

(15) The authorization holder may use streambed gravels from the trench excavation for a filter blanket.

(16) Upon completion of the project the authorization holder shall report to the Oregon Watershed Enhancement Board on Restoration Inventory Report forms provided by the Department.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(20) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(21) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(22) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(23) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0130
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0145
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) Where revetments, riprap and/or any other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches to streambank stabilization.

(2) Nonstructural approaches such as slope pull-back, willow mats, rock barbs, revegetation with native plant species, log and boulder deflectors, shall be used to the maximum extent possible and where technically feasible.

(3) Only clean, durable rock shall be used as riprap. Riprap used for the toe material shall be placed in an irregular pattern using large boulders or rock clusters.

(4) No material shall be removed in excess of the amount required to construct a toe trench, key material to the bank, or slope the bank.

(5) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless otherwise exempt) in accordance with OAR 141-100.

(6) No material shall be placed in excess of the minimum needed to stabilize the area subject to active erosion.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0150
Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0155
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% slope).

(B) One 4-hour period in slow moving water (< 2% slope).

(b) Turbidity shall be monitored at least 100 feet up current of work area to obtain a natural background level and 100 feet down current of work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual gauging is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down current of the work area is considered an exceedance of the standard.

(c) Compliance monitoring shall take place during daylight hours each day of in-water activity every 2 hours in fast moving waters and every 4 hours in slow moving waters. A written record of monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(15) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(19) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(20) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(21) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(22) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0165
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0170
Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, may place or remove material from waters of the state (as described in OAR 141-085-0016), except within the Pacific Ocean, for certain transportation related structures including roads, railroads, culverts, bridges, bicycle lanes and trails.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0175
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable Mandatory Requirements as described in this rule. To be eligible a project must:

(a) Be for one of the following purposes:

(A) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;

(B) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;

(C) Widening, realigning, replacing, or removing existing railroad beds;

(D) Widening, realigning, replacing, or removing existing roads;

(E) Widening, realigning, replacing, or removing existing bridges or similar structures;

(F) Widening, realigning, replacing, or removing existing bicycle, pedestrian or other lanes or trails;

(G) Widening, realigning, replacing, or removing existing boat ramps.

(H) Constructing new bicycle, pedestrian or other lanes or trails;

(I) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

(J) Construction of new culverts;

(K) Extension of existing culverts beyond the existing road prism;

(L) Streambank stabilization associated with projects listed in (A) through (K); and

(M) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation.

(b) In waters other than wetlands, no more than a total of five thousand (5000) cubic yards of material filled, removed, or altered in waters of the state for a single and complete project. Exceeding five thousand (5,000) cubic yards may be authorized only where necessary to improve or restore fluvial processes on a project specific basis (i.e. removal of constrictive fill).

(c) Be for streambank stabilization associated with a transportation-related project as listed above, with no more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of the state for a single project or two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(d) Involve fill in wetlands of 0.5 acres or less for projects as described above in (a).

(e) Be for test holes, borings and similar activities associated with planning and design of transportation structures.

(f) Be for an activity that is incidental to the project necessary to provide fish passage or needed for the structural integrity of the project (i.e. compensatory mitigation, relocate or add utilities, etc.).

(2) A project is not eligible for this general authorization if:

(a) The project is not a transportation-related structure as described above;

(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project is located within the Pacific Ocean.

(d) The project involves stream channel relocation, other than temporary diversions approved by the Department.

(e) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide compensatory mitigation, compensatory wetland mitigation, fish passage or for the structural integrity of the project.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0180
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100; and,

(2) If wetlands may be affected by the proposed activity, a previously approved, unexpired wetland delineation report, less than five (5) years old, that meets the requirements in OAR 141-090-0005 to 0055 is required for a complete application. If the project and mitigation site, if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days in advance of the anticipated GA application submittal.

(3) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0185
Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0190
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval,, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) Stormwater from any authorized activity, conveyed or discharged to a water of the state, including wetlands, must be treated by a facility specifically designed to remove stormwater contaminants before entering streams, wetlands, or other waters of the state, including mitigation wetlands, so as to minimize pollutants entering those water bodies.

(15) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(16) The authorization holder shall ensure that nonstructural approaches to bank stabilization such as slope pull-back, willow mats, rock barbs, revegetation with localized native plant species, log and boulder deflectors, are utilized unless otherwise approved by Department. Where, riprap and/or

other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters. Only clean, durable rock shall be used as riprap. No concrete or asphalt shall be used.

(17) In the case of road removal, the authorization holder shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(18) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(19) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(20) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(21) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(22) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(23) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(24) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0200
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0220
Project Guidelines

(1) The wetland restoration or enhancement project should use techniques identified in *An Introduction and Users' Guide to Wetland Restoration, Creation and Enhancement* developed by the Interagency Work Group on Wetland Restoration.

(2) The following activities are specifically allowed under this general authorization:

(a) Water diversion structures. Water diversion structures may be used to direct flow into restoration or enhancement sites. The diversion structure will be consistent with the fish passage and screening requirements of ODFW.

(b) Water impoundment structures. Water depth, duration and degree of fluctuation in the restored wetland should be characteristic of similar wetlands in the eco-region. Water control structures may be used to manipulate water levels to simulate historical conditions, including complete drying out of the wetland.

(c) Dikes and ditches. Dikes and/or ditches may be altered or constructed. Relocating existing dikes to expand the floodplain and enlarge wetlands is an appropriate use of this general authorization. All spoil mate-

rials should be removed from the wetland or floodplain portion of the wetland site, but some material may be used within the restoration area as long as it assists in accomplishing the objectives of the restoration. Dike and levee slopes should be constructed at between 6:1 and 20:1 unless the wetland site does not allow it due to shape/size.

(d) Dike removal or breaching. For the purposes of restoring seasonal, tidal or other periodic flooding or saturation, dikes may be removed or breached under this General Authorization. Any breach should be sized sufficiently to prevent hydraulic interference in tidal and/or other flooding and to prevent scour. Dike material may be used in the restoration project or moved to an offsite, upland location.

(e) Filling of drainage ditches and or removal of drain tile. Drainage ditches may be filled and drain tile removed or broken under this general authorization.

(f) Streambank excavation. Expanding the surface area of areas subject to seasonal inundation in order to expand the wetland fringes of adjacent wetland areas by removal of bank material may be authorized under this general authorization.

(g) Surface excavation and recontouring. Restoring the uneven topographic surface to lands that have been subject to excavation and historical degradation may be authorized. All materials removed must be placed on uplands.

(h) Blasting. Blasting to create depressions or recreate habitat channels is allowed. A blasting permit may be required by the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0225
Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0230
Conditions for Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(15) The authorization holder shall provide a vegetated buffer of at least 50 feet to be maintained on uplands adjacent to the wetland enhancement or restoration project area, unless otherwise authorized by the Department.

(16) Upon completion of the project, the project shall be reported to the Oregon Watershed Enhancement Board and the Department on a Restoration Inventory Report form provided by the Department.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(20) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(21) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(22) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(23) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0240
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0250
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be for the specific purpose of recreational or small scale placer mining;

(b) Be conducted within Essential Salmon Habitat; and

(c) Remove, fill or alter less than twenty-five (25) cubic yards of material annually from the bed of a stream designated as Essential Salmon Habitat; and

(2) A project is not eligible for this general authorization if:

(a) The project does not meet the eligibility and mandatory requirements;

(b) The project involves the construction of permanent dams; or

(c) The project involves excavation from the streambank.

(d) The project involves the use of a suction dredge within a Scenic Waterway.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0255
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements: If the project is within a state Scenic Waterway the use of a suction dredge is not permitted.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0265
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) An authorization holder may construct a temporary low rise dam if the structure:

(a) Does not extend across the entire width of waterway, and allows the free passage of water in an amount sufficient to enable fish to travel unimpeded up and down the stream;

(b) Creates only the minimal area of impounded water necessary to operate the dredge; and

(c) Is removed upon completion of the mining activity unless otherwise instructed by the Department.

(2) The general authorization does not allow nozzling, sluicing, or digging to occur outside the wet perimeter, nor extend the wet perimeter.

(3) The general authorization does not allow disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars).

(4) The general authorization does not allow movement of boulders, logs, stumps, or other woody material from within the wet perimeter other than movement by hand and non-motorized equipment.

(5) The general authorization requires that the authorization holder upon completion of the project, and to the greatest extent possible, level all piles outside the main channel of the waterway created by the activity. In addition, all furrows, potholes, or other depressions outside the main channel of the waterway created by the activity shall, if practical, have at least one open side to prevent fish entrapment as the water level falls.

(6) The authorization holder shall obtain landowner permission before operating on public or private property.

(7) If the authorization holder intends to use a motorized suction dredge, a suction dredge waste discharge permit (700 PM) from the Department of Environmental Quality, must be obtained, as applicable.

(8) The authorization holder shall conduct the activity only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources", unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.

(9) The authorization holder shall not allow petroleum products, chemicals or deleterious materials to enter the water.

(10) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(11) The authorization holder must ensure that the activity complies with other applicable local, state, and federal laws and regulations, including the state and federal Endangered Species Act.

(12) The authorization holder shall not allow the project to interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(13) The authorization holder shall adhere to the following conditions:

(a) The activity shall not impede recreational boating.

(b) Use of motorized suction dredges shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a residence or within five hundred (500) feet of a campground except within a federally designated recreational mining site.

(c) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(14) The authorization holder shall report, on a form provided by the Department, the estimated amount of material removed, placed, or altered in each waterway operated in during the preceding calendar year. The Department must receive this report no later than January 31st of each year that this general authorization is valid.

(15) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during the authorized activity, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(16) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0275
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2011, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0295
Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0300
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with

the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are stabilized with the appropriate erosion control best management practices and revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (< 2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) For drainage ditch cleaning activities, the authorization holder shall comply with the following:

(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;

(b) Only sand and silt sediments may be removed. This authorization is not for the removal of gravel;

(c) Erosion of disturbed areas (i.e., drainage ditch banks and work areas) shall be minimized through revegetation with grass and/or planting of trees and shrubs; and

(d) Removal shall be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Department.

(e) At any time excavated material is placed on adjacent dikes it shall be stabilized to eliminate erosion back into the drainage ditch.

(f) If excavated material is to be thinly spread over adjacent wetland, wet pasture, or farmed wetland, it is to be spread prior to the onset of winter rains, and controlled from eroding back into the drainage ditch.

(15) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(19) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(20) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(21) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(22) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0310
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2011, at which time this general authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0415
Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0420
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Department designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall not disturb or destroy woody vegetation to complete the project.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(10) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% slope).

(B) One 4-hour period in slow moving water (<2% slope).

(b) Turbidity shall be monitored at least 100 feet up current of work area to obtain a natural background level and 100 feet down current of work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual gauging is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down current of the work area is considered an exceedance of the standard.

(c) Compliance monitoring shall take place during daylight hours each day of in-water activity every 2 hours in fast moving waters and every 4 hours in slow moving waters. A written record of monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(11) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(12) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(13) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the

project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0430
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0077. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0520
Conditions for Issuance of General Authorization

All persons conducting activities under this general authorization shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown listed species are encountered during the project, the authorization holder shall immediately cease work and contact the Department as soon as possible.

(6) When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0530
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be reviewed in accordance with the provisions of ORS 196.850(5), and modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0555
Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization, the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must be a bridge replacement or repair and shall be limited to the following purposes:

(a) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;

(b) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;

(c) Widening, replacing, realigning or removing existing railroad beds;

(d) Widening, replacing, realigning or removing existing roads;

(e) Widening, replacing, realigning, removing or replacing existing bridges or similar structures;

(f) Widening, replacing, realigning or removing existing bicycle, pedestrian or other lanes or trails;

(g) Constructing new bicycle, pedestrian or other lanes or trails;

(h) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

(i) Construction of new culverts;

(j) Extension of existing culverts beyond the existing road prism;

(k) Streambank stabilization associated with projects listed in (a) through (j);

(l) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation;

(m) Temporary structures;

(n) Staging areas for equipment that will be restored at time of project completion;

(o) Test holes, boring and similar activities associated with planning and design of transportation structures; and

(p) Other activities that within the discretion of the Department are determined to be necessary to:

(A) Provide fish passage;

(B) Ensure the structural integrity of the project; or

(C) Relocate utilities spanning the original bridge structure or similar activities that are integrally related to accomplishing the bridge repair or replacement.

(2) A project is not eligible for this general authorization if:

(a) The project is not primarily a bridge replacement or repair;

(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide compensatory mitigation, compensatory wetland mitigation, fish passage or for the structural integrity of the project.

(3) Permanent fill in wetland is limited to 0.5 acres or less. In waters other than wetlands, no more than a total of five thousand (5,000) cubic yards of material may be filled, removed or altered in waters of the state for a single and complete project. Exceeding five thousand (5,000) cubic yards is authorized only where necessary to improve or restore fluvial processes on a project specific basis.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0560
Mandatory Requirements

(1) The applicant must be ODOT or a party approved by ODOT to be qualified as an applicant as defined in OAR 141-085-0010(3).

(2) If the activity is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(3) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085-0115 to 141-085-0176 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses.

(a) Prior to initiating construction, ODOT shall provide a project notification form that documents how compensatory wetland mitigation or compensatory mitigation for waters other than wetlands is to be achieved for the individual project;

(b) ODOT shall develop and implement a comprehensive compensatory mitigation site monitoring, reporting, and corrective action program as approved by the Department.

(4) Prior to expiration of this General Authorization, ODOT shall calculate total acres of permanent wetland impact for those projects authorized under this rule and determine if the functional attributes of the compensatory wetland mitigation has compensated for functions lost through project development in accordance with OAR 141-085-0136. If a deficit exists, the balance shall be achieved through additional on-site or off-site mitigation including payment-to-provide options in accordance with OAR 141-085-0131.

(5) If wetlands may be affected by the proposed activity, a previously-approved, unexpired wetland delineation report, less than five (5) years old that meets the requirements OAR 141-090-0005 to 0055, is required for a complete application. If the project and mitigation site, if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0565
Application Requirements; Review Process

(1) To qualify for a General Authorization under this rule, ODOT shall, before beginning construction, submit to the Department an application, on a form provided by the Division that includes the following information:

(a) Location of project;

(b) Map of project area with removal-fill impact area clearly identified;

(c) Dates of expected work;

(d) References to documents previously reviewed and approved by the Department (e.g., environmental assessments);

(e) Project design information, including plan and section view of proposed new structures;

(f) Locations of temporary access areas, staging areas, and other areas of disturbance;

(g) Wetland delineation concurrence letter, if applicable;

(h) Location of ordinary high water, if applicable;

(i) Jurisdictional impact acreage and volume (in cubic yards) of removal and/or fill;

(k) List of ODOT performance standards applicable to the project;

(l) Documentation demonstrating how and when compensatory mitigation will be achieved;

(m) Documentation demonstrating how project complies with applicable ODOT Performance Standards, and any other relevant information requested by the Department.

(n) Documentation of local government land use approval; and

(o) Documentation of coordination with adjacent property owners, Tribal governments (as applicable) and state and federal natural resource agencies.

(2) Within fifteen (15) calendar days of receipt of a completed application, the Division will review the application for compliance with the conditions in OAR 141-089-0570 of these rules and notify ODOT whether the project is eligible, eligible with new or modified conditions, or ineligible. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0570
Conditions of Issuance of General Authorization

ODOT shall adhere to the conditions of the General Authorization.

(1) ODOT shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project.

(2) ODOT shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of construction activities for a project authorized under this general authorization.

(3) ODOT shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.

(4) When listed species are present, ODOT shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, ODOT shall contact the Department as soon as possible.

(5) ODOT shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, ODOT shall immediately cease work at the discovery site and contact the Department.

(6) ODOT shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(7) ODOT shall implement and comply with all relevant ODOT Bridge Program Performance Standards.

(8) ODOT shall flag the boundaries of clearing limits associated with site access and construction to prevent ground disturbance of critical riparian vegetation, wetlands and other sensitive sites beyond the flagged boundary.

(9) ODOT shall prepare and carry out a site restoration plan as necessary to ensure that all habitats (e.g., streambanks, soils and vegetation) disturbed by the project are cleaned up and restored. Site restoration shall be conducted using a diverse assemblage of species native to the project area or region, including grasses, forbs, shrubs and trees as appropriate. Grass and forb seed mixes containing exotic species are permitted, if they will hold the soil, not persist, and are certified to be free of noxious weeds.

(10) ODOT shall locate vehicle staging, cleaning, maintenance, refueling, and fuel storage facilities (a) in areas that have been previously compacted, disturbed, and cleared (if available) and (b) in areas where delivery of contaminants to the soil and waters can be prevented, contained, and cleaned rapidly.

(11) ODOT shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient < 2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) ODOT shall eliminate direct discharge of stormwater from bridge decks to waters.

(14) ODOT shall prepare and carry out a pollution and erosion control plan to prevent pollution caused by surveying or construction operations. The pollution and erosion control plan will meet requirements of all applicable laws and regulations.

(15) ODOT shall ensure that other structures, uses or activities not associated with the application for the proposed project (i.e., vehicle maintenance, construction of storage buildings, parking lots) are not permitted.

(16) ODOT shall comply with the following bank stabilization guidelines:

(a) Unless precluded by flow conditions, channel and bank stabilization efforts should use a vegetative stabilization approach such as one of the following methods:

(A) Woody plantings and variations (e.g., live stakes, brush layering, facines, brush mattresses), where appropriate.

(B) Herbaceous cover, where analysis of available records (e.g., historical accounts and photographs) shows that trees or shrubs did not exist on the site within historic times.

(C) Deformable soil reinforcement, consisting of soil layers or lifts strengthened with fabric and vegetation that are mobile (‘deformable’) at approximately two- to five-year recurrence flows.

(D) Coir logs (long bundles of coconut fiber), straw bales and straw logs used individually or in stacks to trap sediment and provide growth medium for riparian plants.

(E) Bank reshaping and slope grading, when used to reduce a bank slope angle without changing the location of its toe, increase roughness and cross-section, and provide more favorable planting surfaces.

(F) Floodplain roughness, e.g., floodplain tree and large woody debris rows, live siltation fences, brush traverses, brush rows and live brush sills; used to reduce the likelihood of avulsion in areas where natural floodplain roughness is poorly developed or has been removed.

(G) Floodplain flow spreaders, consisting of one or more rows of trees and accumulated debris used to spread flow across the floodplain.

(b) Flow-redirection structures known as barbs, vanes, or bendway weirs may be used for bank stabilization, when designed as follows or otherwise approved in writing by DSL:

(A) No part of the flow-redirection structure may exceed bank full elevation, including all rock buried in the bank key.

(B) The flow-redirection structure shall be composed primarily of wood or otherwise shall incorporate large wood at a suitable elevation in an exposed portion of the structure or the bank key. Placing the large woody debris near streambanks in the depositional area between flow direction structures to satisfy this requirement is not approved, unless those areas are likely to be greater than 1 meter in depth, sufficient for salmon rearing habitats.

(C) The trench excavated for the bank key above bankfull elevation shall be filled with soil and topped with native vegetation.

(D) The maximum flow-redirection structure length shall not exceed 1/4 of the bankfull channel width.

(E) Rock shall be placed individually, without end dumping.

(F) If two or more flow-redirection structures are built in a series, the flow-redirection structure farthest upstream shall be placed within 150 feet or 2.5 bankfull channel widths, from the flow-redirection structure farthest downstream.

(G) Woody riparian plantings shall be included as a project component where appropriate.

(c) When used for bank stabilization, rock will be class 350 metric, or larger, wherever feasible, but may not impair natural stream flows into or out of secondary channels or riparian wetlands. Whenever feasible, topsoil shall be placed over the rock and planted with woody vegetation. Rock may be used instead of wood for the following purposes and structures:

(A) As ballast to anchor or stabilize large woody debris components of an approved bank treatment.

(B) To fill scour holes, as necessary to protect the integrity of the project, if the rock is limited to the depth of the scour hole and does not extend above the channel bed.

(C) To construct a footing, facing, head wall, or other protection necessary to prevent scouring or downcutting of, or fill slope erosion or failure at, an existing flow control structure (e.g., a culvert, water intake), utility line, or bridge support.

(D) To construct a flow-redirection structure as described above.

(d) If flow conditions require the use of riprap to achieve bank stabilization, adequate fines and substrate materials must be incorporated to sustain the growth and survival of native herbaceous vegetation and shrubs.

(17) In the case of road removal, ODOT shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(18) If temporary roads are required through wetlands, ODOT shall install culverts to maintain connectivity between wetland areas.

(19) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(20) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(21) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(22) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long-term harm to water resources of the state.

(23) The Division may, at any time, by notice to ODOT revoke or modify any project approval granted under this General Authorization if it determines the conditions of the General Authorization are insufficient to minimize individual or cumulative environmental impacts.

(24) ODOT is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

(25) ODOT shall keep a copy of all relevant permits and approvals available at the work site whenever the activity is being conducted.

(26) The General Authorization applies only to the permit requirements of the Removal-Fill Law. Any activity on designated State Scenic Waterways must still obtain prior approval from the Director as required by the Oregon Scenic Waterway Law and Scenic Waterway Removal-Fill Rules (OAR 141-100).

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0580
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0595
Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(2) A wetland delineation report has been approved by the Department in accordance with OAR 141-090-0040.

(3) A compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses. Applicants for projects involving wetland impacts to areas less than 0.1 (one-tenth) acre may use off-site compensatory wetland mitigation.

(4) If wetlands may be affected by the proposed activity, a previously approved, unexpired wetland delineation report, less than five (5) years old, that meets the requirements in OAR 141-090-0005 to 0055, is required for a complete application. If the project and mitigation site, if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days in advance of the anticipated GA application submittal.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0600
Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0605
Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown state or federal listed species are encountered during the project, the authorization holder shall cease work immediately and contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(8) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(10) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

141-089-0615
Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process described in OAR 141-085-0075. However, this is only an opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef.1-3-06

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Department of Veterans' Affairs
Chapter 274

Adm. Order No.: DVA 7-2005(Temp)
Filed with Sec. of State: 12-22-2005
Certified to be Effective: 12-23-05 thru 6-21-06
Notice Publication Date:
Rules Adopted: 274-030-0600, 274-030-0605, 274-030-0610, 274-030-0615, 274-030-0620, 274-030-0621, 274-030-0630, 274-030-0640
Subject: The 73rd Oregon Legislative Assemble-2005 Regular Session passed Senate Bill (SB) 5629 which appropriated funds to be expended for purposes described in SB 1100 which mandates that the

Director of Veterans' Affairs adopt rules to establish a program to enhance and expand the services provided by county veterans' service officers. These rules are to include the development and implementation of a distribution formula, and to establish the requirements for reporting and data collection.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-030-0600
Expansion and Enhancement Appropriations Program

(1) This program's objective is to provide designated funds which are to be utilized to expand and enhance the services provided by county veterans' service programs.

(2) The Department of Veterans Affairs reserves the right to establish, revise, or add to this program's rules.

Stat. Auth.: Ch. 836, OL 2005, ORS 406.030, 406.050, 406.310 - 406.340, 408.410
Stats. Implemented: Ch. 836, OL 2005, 406.030, 406.050, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06

274-030-0605
County Programs

(1) The governing body of counties which have qualified for funds on the basis of the Department of Veterans' Affairs approval of the county's plan, shall submit quarterly reports of expenses of their county veterans' service officer programs on forms provided by the Department.

(2) County service officers shall submit quarterly reports of their activities on forms provided by the Department before reimbursement shall be authorized.

Stat. Auth.: Ch. 836, OL 2005, ORS 406.030, 406.050, 406.310 - 406.340, 408.410
Stats. Implemented: Ch. 836, OL 2005, 406.030, 406.050, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06

274-030-0610
Formula For and the Disbursement of Funds

(1) Prior to the disbursement of funds, the Department of Veterans' Affairs (Department) may retain an amount not to exceed six percent of the total amount appropriated for the purpose of the Expansion and Enhancement Appropriations Program.

(2) The Department, after consultation with the Advisory Committee, shall determine the maximum amount of funds payable to each county.

(3) Payment amounts will be calculated using a formula based on, but not limited to, the following:

(a) A base amount;

(b) The number of veterans residing in each county;

(c) The existing veterans' service resources available in each county;

(d) The rehabilitation of the greatest number of Oregon veterans; and

(e) The elimination, as much as possible, of any duplication of effort and ineffiecient expenditure of funds.

(4) Upon approval by the Department, funds will be disbursed for the submitted expansion or enhancement plan.

(5) Disbursements will not be allowed for capital outlay.

Stat. Auth.: Ch. 836, OL 2005, ORS 406.030, 406.050, 406.310 - 406.340, 408.410
Stats. Implemented: Ch. 836, OL 2005, 406.030, 406.050, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06

274-030-0615
Fiscal Division of Funds

Of the funds available for the biennium for disbursement to counties, not more than one-half shall be disbursed during the first fiscal year of the biennium.

Stat. Auth.: Ch. 836, OL 2005, ORS 406.030, 406.050, 406.310 - 406.340, 408.410
Stats. Implemented: Ch. 836, OL 2005, 406.030, 406.050, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06

274-030-0620
Quarterly Reports and Audits

(1) Quarterly disbursements to counties shall be approved for payment only after the service officer's report and the county report of expenditures have been received by the Veterans Services Division on forms prescribed by the Department. The Department may audit and examine the activities and expenditures of counties in connection with their programs of service to war veterans before approving reimbursements.

(2) Completed reports must be received by the Department within 30 days after the end of each fiscal quarter.

(3) Audits may require refunds of prior disbursements if no expansion or enhancement activities can be verified.

Stat. Auth.: Ch. 836, OL 2005, ORS 406.030, 406.050, 406.310 - 406.340, 408.410
Stats. Implemented: Ch. 836, OL 2005, 406.030, 406.050, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06

274-030-0621
Payments and Adjustments

Payments shall be made quarterly at the rate of disbursement as established in OAR 274-030-0610, Formula For and the Disbursement of Funds.

Stat. Auth.: Ch. 836, OL 2005, ORS 406.030, 406.050, 406.310 - 406.340, 408.410
Stats. Implemented: Ch. 836, OL 2005, 406.030, 406.050, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06

274-030-0630
Withholding Funds

Funds may be withheld at the discretion of the Department of Veterans' Affairs due, but not limited, to the following conditions:

(1) Reports are not submitted in the timeline established in OAR 274-030-0620, Quarterly Reports and Audits.

(2) Reports do not contain accurate or verifiable information.

(3) Lack of evidence that previous funds were used in a manner established in OAR 274-030-0621, Payments and Adjustments.

(4) Lack of evidence that acceptable progress has been made in accomplishing the timelines, goals, and objectives as contained in the county's approved plan.

(5) Any funds being withheld will be distributed according to SB 1100, §4, subsections (1)(c) and (d) of the Legislative Assembly-2005 Regular Session.

Stat. Auth.: Ch. 836, OL 2005, ORS 406.030, 406.050, 406.310 - 406.340, 408.410
Stats. Implemented: Ch. 836, OL 2005, 406.030, 406.050, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06

274-030-0640
Waiver of Rules

Subject to the limitations of the law, and at its sole discretion, the Department of Veterans' Affairs may waive all or part of these administrative rules.

Stat. Auth.: Ch. 836, OL 2005, ORS 406.030, 406.050, 406.310 - 406.340, 408.410
Stats. Implemented: Ch. 836, OL 2005, 406.030, 406.050, 408.410
Hist.: DVA 7-2005(Temp), f. 12-22-05, cert. ef. 12-23-05 thru 6-21-06

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Adm. Order No.: DVA 8-2005
Filed with Sec. of State: 12-27-2005
Certified to be Effective: 12-27-05
Notice Publication Date: 12-1-05
Rules Amended: 274-020-0340, 274-045-0060
Subject: Senate Bill 223, of the 2005 Regular Session of Legislature amended ORS 407.225(3).

The maximum allowable loan amount for a veterans' home loan amount increased from 97 percent of the net appraised value to 100 percent of the net appraised value.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-020-0340
Terms of Loan

(1) The loan value (net appraised value) shall be used as the basis for determining the maximum loan, subject to statutory limitations. Under the provisions of ORS 407.225(3), the maximum loan on a home which is real property may not exceed 100 percent of the loan value (net appraised value), but may be a lesser amount as determined from time-to-time by the Director of Veterans' Affairs, (Director):

(a) On farms, the maximum original loan allowable for acquisition of the principal home unit portion of the property shall not exceed the maximum home loan, whether it be for purchase, refinance, construction, improvements, or a combination of these; and the maximum additional loan or advance for improvements to the principal home shall not exceed the difference between the maximum home loan and that portion of the original loan granted on the principal home unit, except advances for protection of security improvements, taxes, and insurance premiums;

(b) Loans shall be made in multiples of $1.

(2) The Director shall determine the period and amount of repayment based on the age, condition, location, and useful life of the security, but the maximum period of repayment shall not exceed statutory limits.

(3) The borrower shall timely pay all property taxes and other assessments that may or do become a lien against the loan security.

(4) The borrower shall carry fire and extended coverage insurance on the security. The Director also may require that hazards other than fire be covered. All premiums and charges for said coverage shall be paid timely by the borrower:

(a) The Director may determine the form and amount of insurance coverage for the security;

(b) All insurance money shall be payable to the State of Oregon, Director of Veterans' Affairs, by endorsement of the Director-approved mortgagee clause;

(c) The Director may enter into agreements with companies engaged in the business of providing insurance management programs which, among other things, assure the Director that the required insurance is kept in force. Where the borrower fails or refuses to keep the property adequately insured, the Director may pay the premium charged by the company providing the insurance management service, and any payment of premium so made shall be added to the amount due from the borrower and shall bear interest at the same rate as the principal indebtedness. The loan payment may be increased to repay the money advanced to pay the insurance premium and accrued interest, over a period of 12 months;

(d) In case of loss, the Director shall determine the disposition of any and all funds received under the insurance policies.

(5) On all loans made on or after June 1, 1990, or as otherwise agreed to by the borrower and the Director, the Director may collect in advance from said borrowers together with their payments required under section (2) of this rule, sufficient amounts to pay property taxes, insurance premiums, and other charges related to the security. Such additional amounts collected by the Director shall be held in escrow pending payment of the obligations for which they are collected and interest on said amounts shall be paid to the borrower in the manner and at the rate of interest described in ORS 87.245(1).

(6) Property taxes, insurance premiums, and other charges may be paid by the Director from funds collected from the borrower for those purposes. The Director, in the absence of funds collected from the borrower (or if such funds are insufficient in amount), may, at his option, elect to pay property taxes, insurance premiums, and other charges from the Oregon War Veteran's Bond Sinking Account. Any amount paid by the Director from the Oregon War Veteran's Bond Sinking Account may be added to and become part of the loan principal and shall bear interest at the same rate as the balance of the principal indebtedness. On loans made after June 1, 1991, excluding qualified loan assumptions, the Director will not add amounts advanced for payment of property taxes or insurance premiums to the principal balance of the loan. On these loans, any amount advanced will be entered as a negative balance in the escrow account.

(7) The borrower's loan payment may be increased to repay the money advanced from the Oregon War Veteran's Bond Sinking Account to pay the property taxes, insurance premiums, and other charges against the security, together with interest thereon, within a maximum period of 12 months or such shorter time as established by the Director.

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.169, 407.179, 407.179, 407.181, 407.225(3) & 407.275
Stats. Implemented: ORS 407
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 29, f. 7-3-63, ef. 9-2-63; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 42, f. 3-2-73, ef. 3-20-73; DVA 45, f. & ef. 12-1-75; DVA 1-1980, f. & ef. 1-15-80; DVA 3-1980, f. & ef. 7-1-80; DVA 6-1983, f. & ef. 5-3-83; DVA 3-1985, f. 2-26-85, ef. 3-1-85; DVA 3-1987, f. & ef. 5-1-87; DVA 3-1990, f. & cert. ef. 5-1-90; DVA 1-1992, f. & cert. ef. 1-2-92; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 3-2003(Temp), f. & cert. ef. 4-7-03 thru 10-3-03; DVA 11-2003, f. & cert. ef. 9-23-03; DVA 8-2005, f. & cert. ef. 12-27-05

274-045-0060
Terms of Loan

(1) The loan value (net appraised value) shall be used as the basis for determining the maximum loan, subject to statutory limitations. Under the provisions of ORS 407.225(3), the maximum loan on a home which is real property:

(a) May not exceed 100 percent of the net appraised value of the property or the purchase price (whichever is less);

(b) May not be more than 100 percent of the net appraised value as defined in OAR 274-045-0001, if the loan is for replacement financing;

(c) Shall not be more than the maximum original principal balance permitted on a single-family first mortgage loan by the Federal National Mortgage Association, as published in its announcement and subsequently included in its Selling Guide for a home.

(2) The borrower shall not receive any cash back from the ODVA loan.

(3) The Director shall determine the period and amount of repayment based on the age, condition, location, and useful life of the security, but the maximum period of repayment shall not exceed statutory limits.

(a) Loans shall be made in multiples of one dollar ($1).

(b) Each program loan shall have a final maturity of at least 15 and not more than 30 years from the date of purchase.

(4) The borrower shall timely pay all property taxes and other assessments that may or do become a lien against the loan security.

(5) The borrower shall carry fire and extended coverage insurance on the security. The Director may also require that hazards other than fire be covered. All premiums and charges for said coverage shall be timely paid by the borrower:

(a) The Director may determine the form and amount of insurance coverage for the security;

(b) All insurance money shall be payable to the State of Oregon, Director of Veterans' Affairs, by endorsement of the Director-approved mortgagee clause;

(c) In the event of failure to maintain coverage, the Director shall acquire the necessary coverage and collect amounts due in a manner consistent with security documents;

(d) In case of loss, the Director shall determine the disposition of any and all funds received under the insurance policies.

(6) The Director may collect in advance, unless otherwise agreed, from said borrowers together with their payments required under section (3) of this rule, sufficient amounts to pay property taxes, insurance premiums, and other charges related to the security. Such additional amounts collected by the Director shall be held in escrow pending payment of the obligations for which they are collected and interest on said amounts shall be paid to the borrower in the manner and at the rate of interest described in ORS 87.245(1).

(7) The Director may pay property taxes, insurance premiums and other charges from funds collected from the borrower for those purposes. The Director, in the absence of funds collected from the borrower (or if such funds are insufficient in amount), may at his option, elect to pay property taxes, insurance premiums, and other charges. Any amount paid by the Director may be collected in the manner consistent with the security documents or other manner agreeable to the Director and borrower. The Director will not add amounts advanced for payment of property taxes or insurance premiums to the principal balance of the loan. On these loans, any amount advanced will be entered as a negative balance in the escrow account.

(8) The borrower's loan payment may be increased to repay the money advanced to pay the property taxes, insurance premiums, and other charges against the security, together with interest thereon, within a maximum period of 12 months or such shorter time as established by the Director.

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.169, 407.179, 407.179, 407.181, 407.225(3) & 407.275
Stats. Implemented: ORS 407
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2001(Temp), f. & cert. ef. 6-15-01 thru 12-11-01; DVA 9-2001, f. & cert. ef. 11-23-01; DVA 3-2003(Temp), f. & cert. ef. 4-7-03 thru 10-3-03; DVA 11-2003, f. & cert. ef. 9-23-03; DVA 8-2005, f. & cert. ef. 12-27-05

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Employment Department
Chapter 471

Adm. Order No.: ED 8-2005
Filed with Sec. of State: 12-23-2005
Certified to be Effective: 12-25-05
Notice Publication Date: 11-1-05
Rules Amended: 471-010-0040, 471-020-0010, 471-030-0035, 471-030-0050, 471-030-0060, 471-030-0065, 471-030-0174, 471-031-0055, 471-040-0005
Rules Repealed: 471-030-0030, 471-031-0057, 471-042-0005, 471-050-0001
Subject: The Employment Department is proposing to amend the above rules to make language consistent with other rule changes.
Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-010-0040
Filing Timely Notices

(1) Except as specifically provided or prohibited in OAR 471-040-0005 and in this rule, when an individual or employing unit is required by ORS Chapter 657, or the rules adopted pursuant thereto, to file a notice, request, appeal, application, payment, report, tax election, claim, or any other document within a specified time, such individual or employing unit may file such document by personal delivery or by mail to any office of the Employment Department in Oregon or similar employment office in any other state. Except for payments and tax reports, all notices, requests, appeals, applications, tax elections, or any other document may be filed by fax.

(2) When the document is filed by mail, the date of filing shall be the postmarked date affixed by the U.S. Postal Service, or in the absence of a postmarked date, the most probable date of mailing as determined by the Director, unless otherwise provided in ORS chapter 657 or OAR chapter 471.

(3) When the document is filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available,

shall be the date of filing. If a filing date cannot otherwise be determined, the most probable date of faxing as determined by the Employment Department, shall be the date of filing.

(4) When the document is filed by any other means, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the employee of the Employment Department, Office of Administrative Hearings or Employment Appeals Board who receives the document.

(5) When an individual or employing unit is entitled to notice of an action or decision by the director or authorized representative, the notice may be delivered in person or by first class mail. Unless otherwise provided in ORS chapter 657 or OAR chapter 471, if the notice is mailed, the notice is considered served on the date it is deposited with the U.S. Postal Service, addressed to such individual or employing unit at the last address known to the Director.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657
Hist.: 1DE 2-1978, f. & ef. 7-21-78; ED 1-1991, f. & cert. ef. 4-1-91; ED 2-1996(Temp), f. & cert. ef. 6-26-96; ED 7-1996, f. 11-20-96, cert. ef. 12-2-96; ED 1-2003, f. 2-7-03 cert. ef. 2-9-03; ED 6-2005(Temp), f. 9-16-05, cert. ef. 9-18-05 thru 2-14-06; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-020-0010
Definitions

As used in OAR 471-020-0010 to 471-020-0030, unless the context requires otherwise:

(1) "Active Status" means a period beginning when an individual is eligible to receive and is being paid unemployment insurance benefits pursuant to OAR 471-030-0036, and ending at Saturday midnight of the third week following the week in which the most recent benefit payment was issued to the individual.

(2) "Enrollment" means entry of information provided under ORS 657.159, 657.715, 657.720 or OAR 471-020-0020 into the Business & Employment Services online job match system.

(3) "Job attached" means:

(a) An individual with a definite return-to-work date; or

(b) An individual who obtains all work assignments through a closed union hiring hall.

(4) "Matching process" means the process of comparing an individual's knowledge, skills and abilities for referral to an employer's job opening.

(5) "Qualified" means the individual's skills and experience meet or exceed the employer's job requirements.

(6) "Profiled" means the application of a ranking system, using criteria established in OAR 471-030-0034, to establish the relative likelihood of a claimant exhausting the maximum benefit amount available in a benefit year.

(7) "Reemployment Services" may include any of the services listed in ORS 657.156(1)(b) and includes subsidized employment.

(8) "Subsidized" means a job listing or employment that meets the requirements of ORS 411.892.

(9) "Suitable" means the factors listed in ORS 657.190 and 657.195.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.156 & 657.159
Hist.: ED 1-1999(Temp), f. & cert. ef. 1-8-99 thru 7-6-99; ED 4-1999, f. 6-29-99, cert. ef. 7-4-99; ED 6-2004, f. 8-5-04 cert. ef. 8-8-04; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-030-0035
Work Registration

(1) A claimant may fulfill the "registered for work" requirements of ORS 657.155(1)(a) by completion of such processes as directed by the Director in order to create a full registration for work.

(2) "Full registration for work" as used in this rule, means providing information regarding the individual's job qualifications, skills, training and experience as the Director or an authorized representative of the Director deems necessary to carry out job placement services for the individual.

(3) The provisions of this rule shall not apply to an individual claiming benefits as a "partially unemployed individual" as defined in OAR 471-030-0060.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.155
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 2-1986, f. & ef. 4-14-86; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-030-0050
Benefit Payments

Benefits shall be paid by such method as the Director may approve. Nothing in this rule shall authorize the delivery of a benefit payment in violation of ORS 657.855.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.255
Hist.: 1DE 150, f. & ef. 2-9-76; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-030-0060
Procedure for Payment of Benefits for Partial Unemployment

(1) As used in these rules, a partially unemployed individual is one who:

(a) Has been working full time and remains attached to their usual and regular employer; and

(b) Now works some but less than their customary full time hours for such employer because of lack of full time work;

(c) Has earnings less than their weekly benefit amount; and

(d) Expects to return to full time work for such employer.

(2) A "Notice and Verification of Partial Unemployment" is a form furnished or approved by the Employment Department which sets forth the procedures for filing unemployment insurance claims during periods of partial unemployment and makes provisions for both employer and worker certifications to facts material to a determination of eligibility for benefits.

(3) In order to claim benefits for a week of partial unemployment, an individual need not be registered for work but must:

(a) Within 30 calendar days after termination of the week for which benefits are claimed, request from the employer or an Employment Department UI Center, a "Notice and Verification of Partial Unemployment" for such week; and

(b) Mail or fax the completed notice to an Employment Department UI Center within 14 calendar days after receiving the form.

(4) A claimant who had been receiving benefits for partial unemployment may continue to file claims as a partially unemployed individual under this section for four consecutive weeks of total or part-total unemployment with no wages from the regular employer. The conditions of ORS 657.155 as respects registration shall not apply so long as the individual remains attached to the regular employer. If the claimant has no employment and no wages from such regular employer for a fifth consecutive week, he or she no longer qualifies as a partially unemployed individual. In order to continue to claim benefits, the individual must register for work and file continued claims in accordance with the provisions of OAR 471-030-0045. However, such claimant shall not be denied benefits for failure to register as stated herein if the failure was due to omission or neglect by an employee of the Employment Department to advise the claimant of such requirement.

Stat. Auth.: ORS 657 & 657.610
Stats. Implemented: ORS 657.255 & 657
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; ED 2-1992, f. & cert. ef. 6-29-92; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-030-0065
Discretionary Filing Procedures

(1) Pursuant to the provisions of ORS 657.155(1)(a) and to support the policy of prompt payment of benefits when due, the Director may discretionally authorize the use of special or alternative forms and procedures for filing unemployment insurance claims under any of the following conditions:

(a) Mass layoffs from employment;

(b) Irregular working schedules;

(c) Plant, factory, firm, or business closure;

(d) Extraordinary weather conditions;

(e) Damage or impairment to Employment Department facilities;

(f) Disaster;

(g) Petroleum fuel shortages; or

(h) Other unusual conditions.

(2) In the exercise of the Director's discretion the Director shall consider:

(a) The number of claimants and employing units affected;

(b) Travel, transportation, and mailing facilities;

(c) Frequency of and anticipated duration of periods of unemployment;

(d) Prospects of reemployment for unemployed workers;

(e) Labor organization involvement;

(f) Administrative expense and feasibility; and

(g) Any other factors that may be significant and material.

(3) When an official identified in section (4) of this rule finds that any of the conditions specified in section (1) of this rule exists, that official may:

(a) Waive the registration requirements of ORS 657.155 for up to four consecutive weeks for which benefits are claimed;

(b) Waive the initial, additional or reopened claim filing requirements of OAR 471-030-0040(3) to permit filing such claims in a week subsequent to the time period allowed in OAR 471-030-0040. The time extension is to be determined by the Director in a manner calculated to insure equity and

provide prompt payment of benefits and may vary from one set of circumstances to another.

(4) The use of special forms and procedures as proposed by this rule may be authorized by the following employees only:

(a) Deputy Director;

(b) Assistant Director for Unemployment Insurance;

(c) Manager of Benefits.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.255
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 5-1979, f. & ef. 8-27-79; 1DE 3-1981, f. & ef. 2-16-81; 1DE 1-1984, f. & ef. 3-21-84; 1DE 2-1984, f. & ef. 9-28-84; ED 1-1991, f. & cert. ef. 4-1-91; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-030-0174
Child Support Intercept Appeals

(1) An individual who has had benefits withheld pursuant to ORS 657.780 shall have appeal rights from such action. Such appeal must be filed in writing within 20 days of the mailing of an affected benefit payment and shall be confined to the issues provided in section (2) of this rule.

(2) A hearing in such cases shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings. The hearing shall be conducted pursuant to OAR chapter 471, division 040, and shall be limited to the issues of the authority of the Employment Department to withhold and the accuracy of the amount so withheld, or either one.

(3) A decision of the administrative law judge shall become final on the date of notification or the mailing thereof to the Director and to the individual at the last-known address of record with the Director.

(4) Judicial review of decisions under this rule shall be as provided in ORS 183.480 for review of orders in contested cases.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.780
Hist.: 1DE 2-1982, f. & ef. 12-8-82; 1DE 3-1985, f. & ef. 12-16-85; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-031-0055
Remuneration Other than Cash

(1) Subject to the provisions of section (2), the term "wages" includes the cash value of all remuneration paid in any medium other than cash, except for agricultural labor and domestic service and the specific exemptions enumerated in ORS 657.115 to 657.140.

(2) Board, lodging, services, facilities, or privileges furnished by an employer shall be considered remuneration paid for services performed by an employee unless it appears that furnishing of the same was not required by the terms of the contract of hire and that the value thereof was not a material factor in the determination by either party of the amount of any cash remuneration payable for such services.

(3) The cash value of non-cash remuneration shall be either:

(a) The amount of non-cash remuneration which is carried on the employer's payroll, provided such amount is comparable to values prevailing in the community; or

(b) An amount determined by the Director when the value of non-cash remuneration is not carried on the employer's payroll. In such determination, board furnished by an employer as remuneration for services shall have a minimum value of 30% of the standard CONUS meal rate per day. The rate per day will be rounded to the nearest dollar. The rate per month will be 30 times the rounded daily rate. If room is furnished in addition to board, no additional value will ordinarily be placed upon the room. If room and board are furnished at hotels, resorts, or lodges, or if a room only, an apartment, a house, or any other consideration is provided, the value for tax purposes will be the fair market value thereof.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.095 & 657.115 - 657.140
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 153, f. 12-23-77, ef. 1-1-78; 1DE 2-1982, f. & ef. 12-8-82; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-040-0005
Request for Hearing

(1) A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal.

(2) A request for hearing on an administrative decision related to the payment or amount of unemployment insurance benefits may be filed:

(a) By mail, by fax or by telephone with any Employment Department UI Center or UI Section in Oregon; or

(b) In person at any publicly accessible Employment Department office in Oregon; or

(c) By mail or fax with the Office of Administrative Hearings in Oregon.

(3) A request for hearing on an administrative decision related to unemployment insurance taxes pursuant to ORS 657.683, 657.663, 657.485, and 657.457, must be in writing and may be filed:

(a) By mail or by fax with any Employment Department UI Center, UI Section or the Office of Administrative Hearings in Oregon; or

(b) In person at any publicly accessible Employment Department office in Oregon.

(4) The filing date for any request for hearing shall be determined as follows:

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of delivery, as evidenced by the receipt date stamped or written by the agency employee who receives the document, shall be the date of filing.

(b) When filed by mail, the date of filing shall be the postmarked date affixed by the United States Postal Service or, in the absence of a postmarked date, the most probable date of mailing.

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, or improbable, in which case the fax receipt date stamped or written by the agency employee, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the most probable date of faxing shall be the date of filing.

(d) When filed by telephone, the date of filing shall be the date marked or stamped by the agency employee accepting the request for hearing.

(e) When filed by any other means, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the employee of the Employment Department, Office of Administrative Hearings or Employment Appeals Board who receives the document.

(5) A request for hearing with respect to a claim for benefits shall not stay the payment of any benefits not placed in issue by the request for hearing, nor shall it stay an order previously entered allowing benefits.

(6) This rule is effective for all hearing requests filed after the effective date of this rule.

Stat. Auth.: ORS 183.335, 657.260, 657.265 - 657.270, 657.335, 657.610 & OL 1993, Ch. 729
Stats. Implemented: ORS 657.280, 657.610 & 657
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 5-1979, f. & ef. 8-27-79; ED 4-1994, f. & cert. ef. 9-2-94; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 7-2003, f. 4-25-03, cert. ef. 4-27-03; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05; ED 6-2005(Temp), f. 9-16-05, cert. ef. 9-18-05 thru 2-14-06; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

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Adm. Order No.: ED 9-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 471-015-0015
Subject: The Employment Department is amending this rule because the opt in/opt out portion of the law is no long required under the Privacy Act.
Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-015-0015
Data Collection for the Performance Reporting Information System

System participants shall provide data to the Performance Reporting Information System in a format that encodes identifying data, including the client's Social Security number, using a formula unique to the system participant, and according to protocols established by agreement with the system administrator, based on the objectives articulated in ORS 657.734. Each system participant must also ensure that any customer whose information is being submitted has been provided with full disclosure of:

(1) How the information will be used;

(2) The authority which authorizes the solicitation of the information and whether disclosure of such information by the customer is mandatory or voluntary; and

(3) The effects on the customer, if any, of not providing all or any part of the requested information.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.610 & 657.734
Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03; ED 9-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: ED 10-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 471-030-0080

Subject: This rule is being amended to align with SB 690 relating to dislocated workers and the development of the UI Training Programs Unit.
Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-030-0080
Professional Technical Training

(1) Professional technical training, as defined in ORS 657.335, shall not be approved by the Director unless the public or private institution, school, or agency offering such program is certified or licensed by the Oregon State Board of Education, the Superintendent of Public Instruction, Regional Workforce Investment Board, or other Oregon State agency authorized to grant such certification or license or an equivalent state agency in the state where the training is to be provided.

(2) Professional technical training shall not be approved by the Director if the Director finds that the planned curriculum of classes and course activity is less than the equivalent of full-time student status as defined by the training provider. The Director may waive this requirement when such requirement would be inconsistent with the policy set forth in ORS 657.337.

(3) To receive benefits for any week during professional technical training, a dislocated worker who is otherwise eligible for unemployment insurance benefits must:

(a) Submit a written application for approval of professional technical training on forms prescribed or approved for such purpose by the Director, with the Employment Department Benefits Section — UI Training Programs Unit within 90 days of:

(A) Certification as a dislocated worker; or

(B) Termination from the dislocating employment; or

(C) The filing of a claim for unemployment insurance benefits; and

(b) Submit to the Employment Department a timely claim for such week in accordance with procedures established in 471-030-0045(4) of these rules; and

(c) Submit to the Employment Department a statement signed by an authorized representative of the training facility which certifies that the claimant was satisfactorily pursuing the approved professional technical training during such week; and

(d) Be in attendance half or more of the scheduled class days during such week unless the days not in attendance will not prevent satisfactory completion of the approved professional technical training.

(4) Decisions of the Director to approve or disapprove an application for course approval or to discontinue such approval for one or more weeks during professional technical training or to approve or deny supplemental benefits under the provisions of ORS 657.335 through 657.360 shall be in writing, shall set forth the reasons therefore, and shall be served upon the claimant by mailing to the claimant's last known address of record with the Employment Department.

(5) As used in ORS 657.335(1):

(a) "Eligible dislocated workers" includes:

(A) For purposes of ORS 657.345(1), any worker attending training financed wholly or in part, or directly delivered by, a recipient or subrecipient administering Title 1B of the Workforce Investment Act of 1998 (P.L. 105-220).

(B) For purposes of ORS 657.345(2), any worker identified as dislocated by the Employment Department under ORS 657.335(1).

(b) "Unlikely to return to their previous occupation or industry" includes the following:

(A) The individual has been identified as meeting the Worker Profiling Program participation threshold developed by the Employment Department, or

(B) The individual has been permanently separated from an employer in an occupation identified as declining by the Employment Department in that geographic area in which the claimant resides, or

(C) The individual has been evaluated and referred to training by a vocational rehabilitation provider, including but not limited to Vocational Rehabilitation Division, Workers Compensation Division, or a private insurance carrier.

(c) "Long-term unemployed" means unemployed from the dislocated occupation for at least 15 of the last 26 weeks or for at least 8 consecutive weeks immediately prior to application (including survival jobs during such period).

(6) In applying the provisions of ORS 657.340, the Director may approve a program of instruction, including transfer credit programs of instruction given at community colleges, leading toward a baccalaureate or higher degree or training that has for its purpose the preparation of persons for employment in occupations which require a baccalaureate or higher degree from institutions of higher education if:

(a) The individual does not have significant transferable skills for other occupations in the statewide labor market;

(b) Unless previously approved in accordance with the provisions of Title IB of the Workforce Investment Act of 1998 (P.L. 105-220), the individual is within 48 quarter credit hours (or the semester equivalent) from completing the baccalaureate or higher degree; and

(c) Completing the baccalaureate or higher degree offers the best chance of long term employment.

(7) As used in ORS 657.340(2), "attendance in professional technical training" means the period of time beginning with the starting date of the professional technical training and ends with satisfactory completion of the training program. The period of time defined in this section includes customary academic recesses for holidays and between academic terms but does not include the customary academic summer recess. For purposes of applying ORS 657.340(2), an individual may be determined not to be in "attendance in professional technical training" as defined in this section if the individual fails to demonstrate satisfactory progress and attendance as defined in section (3) of this rule.

(8) As used in ORS 657.340(3), "terms and conditions" includes "benefit year" as defined in ORS 657.010(3). In applying the provisions of ORS 657.340(3), the benefit year of an eligible dislocated worker may be extended, whether or not the benefit year has expired, if the eligible dislocated worker has not filed a subsequent initial claim establishing a new benefit year.

(9) The determination that an individual meets the definition of dislocated worker may be made by the Employment Department for purposes of paying benefits under ORS 657.335 to 657.360.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.335 - 657.360
Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 1-1983(Temp), f. & ef. 3-9-83; 1DE 2-1983, f. & ef. 8-12-83; ED 1-1991, f. & cert. ef. 4-1-91; ED 4-1991(Temp), f. & cert. ef. 12-30-91; ED 3-1992, f. & cert. ef. 6-29-92; ED 4-1992(Temp), f. & cert. ef. 10-19-92; ED 1-1993, f. & cert. ef. 3-22-93; ED 4-1994, f. & cert. ef. 9-2-94; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 5-2000, f. 10-6-00, cert. ef. 10-8-00 thru 4-6-01; ED 5-2001(Temp), f. 4-6-01, cert. ef. 4-7-01 thru 10-4-01; ED 6-2001, f. 4-20-01, cert. ef. 4-22-01; ED 8-2002, f. 11-22-02 cert. ef. 11-24-02; ED 11-2003, f. 7-25-03, cert. ef. 7-27-03; ED 10-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: ED 11-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Repealed: 471-031-0090
Subject: The Employment Department is repealing this rule because SB 93 repeals sections of ORS 657.072 which have been declared unconstitutional by the Oregon Supreme Court related to church organizations and church ministers.
Rules Coordinator: Lynn M. Nelson—(503) 947-1724

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Adm. Order No.: ED 12-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Repealed: 471-031-0180
Subject: The Employment Department is repealing this rule due to the passage of SB 323, which amends the definition of Independent Contractor. The department may adopt rules in the future relating to the definition of Independent Contractor as used under unemployment insurance laws.
Rules Coordinator: Lynn M. Nelson—(503) 947-1724

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Rule Caption: Amending OAR 471-020-0021 Exemptions; OAR 471-030-0036 Eligibility; OAR 471-030-0049 Lost, stolen, destroyed checks; adopting 471-030-0056 Subpoenas.
Adm. Order No.: ED 1-2006
Filed with Sec. of State: 1-5-2006
Certified to be Effective: 1-8-06
Notice Publication Date: 12-1-05
Rules Adopted: 471-030-0056
Rules Amended: 471-020-0021, 471-030-0036, 471-030-0049

Subject: OAR 471-020-0021 added language to clarify rule and making application more consistent

OAR 471-030-0036 changing work week to calendar week, adding language to temporary layoffs and work search

OAR 471-030-0049 adding definitions of lost, stolen or destroyed

OAR 471-030-0056 rule being adopted to define investigatory subpoenas

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-020-0021
Exemptions from Enrollment

The following unemployment insurance claimants are not required to submit registration information to the Employment Department for job placement purposes:

(1) Individuals claiming benefits as interstate liable claimants against the State of Oregon;

(2) Individuals on a temporary mass layoff from a single employer.

(3) Individuals claiming benefits through an approved shared work plan under the provisions of ORS 657.380;

(4) Individuals claiming benefits for partial unemployment under the provisions of OAR 471-030-0060; and

(5) Individuals who are members in good standing of a union that does not allow members to seek non-union work.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.155, 657.156 & 657.159
Hist.: ED 4-1999, f. 6-29-99, cert. ef. 7-4-99; ED 1-2006. f. 1-5-06, cert. ef. 1-8-06

471-030-0036
Eligibility Factors

(1) In considering suitable work factors under ORS 657.190 and for purposes of determining eligibility under ORS 657.155(1)(c), the Director may require an individual to actively seek the type of work the individual is most capable of performing due to prior job experience and training except that:

(a) If an individual is unable to secure the individual's customary type of work after contacting the potential employers in the labor market where benefits are being claimed, the Director may require the individual to seek less desirable but similar work or work of another type which the individual is capable of performing by virtue of experience and training.

(b) If the type of work an individual is most capable of performing does not exist in the labor market where the individual is claiming benefits, the Director may require the individual to seek any work that exists in the labor market for which the individual is suited by virtue of experience and training.

(c) After the individual has contacted the potential employers in the labor market where benefits are being claimed and is still unable to obtain work as described in 1(a) and (b) of this section, the Director may require the individual to further expand work-seeking activities.

(2) For the purposes of ORS 657.155(1)(c), an individual shall be considered able to work in a particular week only if physically and mentally capable of performing the work he or she actually is seeking during all of the week except:

(a) An occasional and temporary disability for less than half of the week shall not result in a finding that the individual is unable to work for that week; and

(b) An individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work solely on that basis so long as the individual remains available for some work.

(3) For the purposes of ORS 657.155(1)(c), an individual shall be considered available for work if, at a minimum, he or she is:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and

(d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week, unless:

(A) The individual is actively seeking work outside his or her normal labor market area; or

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

(e) However, an individual with a permanent or long-term physical or mental impairment (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unavailable for work solely on that basis so long as the individual remains available for some work.

(f) For the purposes of ORS 657.155(1)(c), an individual is not available for work in any week claimed in which the individual has an opportunity to perform suitable work and fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity.

(g) An individual will be considered not available for work if he or she fails or refuses to seek the type of work required by the Director pursuant to section (1) of this rule.

(h) Providing the individual is otherwise eligible for benefits pursuant to OAR 471-030-0036(3)(a) through (g), a person who has been found to be qualified for benefits under the provisions of ORS 657.176(2)(f) or (g) or 657.176(9)(b)(A) shall be considered available for work only during weeks in which the individual is enrolled in and participating in a recognized drug or alcohol treatment program if such participation was a condition in the determination to allow benefits. This provision does not apply if the individual has satisfactorily completed the course of treatment in accordance with the terms and conditions of the recognized treatment program.

(A) An individual is participating when engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;

(B) A recognized drug or alcohol rehabilitation program is a program authorized and licensed under the provisions of OAR chapter 415.

(4) Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent, step-parent, guardian or other court/legally-appointed caretaker of a child under 13 years of age or of a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her age, who is not willing to or capable of working a particular shift because of a lack of care for that child acceptable to the individual shall be considered available for work if:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s).

(5) (a) For purposes of ORS 657.155(1)(c) an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. In determining whether an individual is conducting an active search for work, the Employment Department may consider among other factors, length of unemployment, economic conditions in the individual's labor market and prospective job openings, weather conditions affecting occupations or industries, seasonal aspects of the individual's regular occupation, expected date of return to work in regular occupation, seniority status of individual, registration with a union hiring hall and normal practices for obtaining the type of work which the individual is seeking pursuant to section (1) of this rule.

(b) For an individual on temporary layoff of four weeks or less with the individual's regular employer:

(A) If the individual had, as of the layoff date, been given a date to return to work, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. After four calendar weeks have passed following the week in which the temporary layoff occurred, the individual must seek work with other employers in addition to the individual's regular employer.

(B) If the individual had not, as of the layoff date, been given a date to return to work, such individual must immediately actively seek work with other employers, including temporary work opportunities, beginning with the week following the end of the week in which the temporary layoff occurred.

(c) For an individual on temporary layoff of more than four weeks with the individual's regular employer: such individual must immediately actively seek work with other employers, including temporary work opportunities, beginning with the week following the end of the week in which the temporary layoff occurred.

(d) For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union.

(6)(a) An individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to

seek and accept the same type of work at a comparable wage. The geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria set forth in this section;

(b) When an individual seeks work through a union hiring hall, the individual's normal labor market area for the work sought is the normal referral jurisdiction of the union, as indicated by the applicable contract.

(7) Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in this or any other state or in any other country in which the individual has authorization to work.

(a) When seeking work in any other state, the geographic area shall be defined by local office employees of that state's Work Force Agency, based on the criteria outlined in section (6) of this rule as though the individual maintained a permanent residence in the labor market where the individual sought work.

(b) When seeking work in any country outside the United States, the geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria outlined in section (6) of this rule as though the individual maintained a permanent residence in the country where the individual sought work.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.155 & 657.190
Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; 1DE 4-1979(Temp), f. & ef. 7-5-79; 1DE 5-1979, f. & ef. 8-27-79; 1DE 1-1982, f. & ef. 6-30-82; ED 2-1992, f. & cert. ef. 6-29-92; ED 5-1994(Temp), f. 10-13-94, cert. ef. 10-16-94; ED 2-1997, f. 10-24-97, cert. ef. 11-3-97; ED 5-2003, f. 4-11-03, cert. ef. 4-13-03; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04; ED 1-2006. f. 1-5-06, cert. ef. 1-8-06

471-030-0049
Lost, Stolen or Destroyed Benefit Checks

The Director will proceed in the following manner when a benefit check has been lost, stolen or destroyed:

(1) For purposes of this rule:

(a) A benefit check is "lost" if the claimant never received an issued check, and the check's whereabouts is unknown or it was received and cannot be found.

(b) A benefit check is "stolen" if the claimant never received an issued check, or it was received and the check was taken or cashed by another without the authorization of the payee, whether or not the other person's identity is known.

(c) A benefit check is "destroyed" if an issued check has not been cashed and has been rendered nonnegotiable.

(d) "Forgery" of a benefit check has the same meaning as provided in ORS 165.007 and further defined in 165.002.

(2) If the benefit check has been issued but not cashed and the claimant completes a sworn statement that the benefit check was lost, stolen or destroyed, the check will be reissued if ten days from the date the original check was issued have elapsed. If the original check and replacement check are both received and cashed by the claimant, the claimant shall be liable for repayment of the overpayment.

(2) If the benefit check has been issued and cashed and it is alleged that the check was not signed by the claimant or the claimant's authorized agent, a determination will be made on the validity of the endorsement:

(a) If the endorsement is determined to be the claimant's or the claimant's authorized agent, the Director will so notify the claimant by letter and no replacement check will be issued;

(b) In the case of forgery, or an unauthorized, non-valid or lack of endorsement, a replacement check will be issued if the claimant is due benefits, unless the claimant participated in forgery, received any portion of the benefits, or benefited from the funds.

(c) The agency will so advise the State Treasurer of the forged check.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.255
Hist.: 1DE 3-1981, f. & ef. 2-16-81; ED 1-2006. f. 1-5-06, cert. ef. 1-8-06

471-030-0056
Investigatory Subpoenas

(1) Investigators or their supervisors may issue and cause to be served subpoenas which compel the attendance of witnesses, order the production of any books, papers, contracts, accounts, records, documents or other physical evidence, or both, as described in but not limited to information in ORS 657.660, in the possession of any person, company or corporation. Such subpoenas shall relate to a scheduled hearing or pertain to the discovery of information necessary to carry out the Employment Department's statutory duties.

(2) In connection with subpoenas issued pursuant to this rule, no witness fees or mileage shall be paid other than for attendance at a scheduled hearing. When witness fees and mileage are payable pursuant to this rule, payment shall be made in the same manner and subject to the same conditions as provided for in OAR 471-040-0020(6) and (7).

(3) An employer, employing unit, company or corporation that fails to comply with a subpoena in accordance with ORS 657.660 and this rule, shall be subject to the penalty provided in ORS 657.990(3).

Stat. Auth: ORS 657
Stats. Implemented: ORS 657.660, 657.990
Hist.: ED 1-2006. f. 1-5-06, cert. ef. 1-8-06

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Rule Caption: OAR 471-030-0076 — Benefits for Athletes.
Adm. Order No.: ED 2-2006(Temp)
Filed with Sec. of State: 1-12-2006
Certified to be Effective: 1-12-06 thru 7-11-06
Notice Publication Date:
Rules Amended: 471-030-0076
Subject: Inserting the word "or" and "and" for appropriate application of law.
Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-030-0076
Benefits for Athletes

(1) As used in ORS 657.186, "any services, substantially all of which consist of participating in sports or athletic events" means all services performed by an individual in any subject employment during their base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

(2) As used in this section, "participating in sports or athletic events" means any services performed in an athletic activity by an individual as:

(a) A regular player or team member;

(b) An alternate player or team member;

(c) An individual in training to become a regular player or team member;

(d) An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

(3) The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons shall be determined by the Director after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

(4) For the purposes of ORS 657.186, a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

(a) The individual has an express or implied multi-year contract which extends into the subsequent sport season; or

(b) The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season; and

(c) There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season; and

(d) The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.186
Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; 1DE 5-1979, f. & ef. 8-27-79; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03; ED 2-2006(Temp), f. & cert. ef. 1-12-06 thru 7-11-06

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Employment Department, Child Care Division Chapter 414

Adm. Order No.: CCD 5-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 414-061-0080
Subject: To amend OAR 414-061-0080 to update the cost charged for a FBI records check; the cost of these record checks has been raised by the Oregon State Police.
Rules Coordinator: Lynn M. Nelson—(503) 947-1724

414-061-0080
Procedures for Conducting FBI Criminal History Checks

(1) An FBI criminal records check will be done on a subject individual whose OSP CCH record shows multi-state offender status, who has lived in Oregon less than 18 months or when CCD has information that the individual has committed a crime in another state.

(2) The subject individual shall supply to CCD the following information:

(a) One properly completed FBI fingerprint card, with printing in the "reason fingerprinted" block which reads "ORS 181.537/NCPA/VCA Child Care";

(b) Properly completed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry; and

(c) For a subject individual who acknowledges a prior conviction, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided under this rule.

(3) As part of the consent to a criminal records check, CCD may request the subject individual to consent to the use of his/her social security number in conducting the check.

(4) CCD will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled in the Criminal History Registry.

(5) CCD will charge the subject individual $62 for an FBI records check, to be paid at the time of the request.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98 ; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 6-2004, f. & cert. ef 12-17-04; CCD 3-2005(Temp), f. & cert. ef. 8-16-05 thru 2-12-06; CCD 5-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: CCD 6-2005(Temp)
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06 thru 6-29-06
Notice Publication Date:
Rules Amended: 414-350-0000, 414-350-0010, 414-350-0020, 414-350-0030, 414-350-0050, 414-350-0100, 414-350-0120, 414-350-0140, 414-350-0160, 414-350-0170, 414-350-0220, 414-350-0235, 414-350-0250
Subject: These rules are being amended pursuant to the passage of HB 2999, increasing the number of children allowed to be cared for at one time from 12 to 16.
Rules Coordinator: Lynn M. Nelson—(503) 947-1724

414-350-0000
Applicability of Rules

(1) OAR 414-350-0000 through 414-350-0400 set forth the Child Care Division's requirements for the inspection and certification of certified family child care homes subject to Oregon laws governing child care facilities (ORS 657A.030, 657A.250 through 657A.310, 657A.350 through 657A.460, and 657A.990) that:

(a) Care for no more than 16 children; and

(b) Are located in a building constructed as a single-family dwelling.

(2) The following child care facilities are specifically excluded by law and are not required to comply with these rules:

(a) A registered family child care home;

(b) A facility that is primarily educational and provides care for less than four hours per day to children 36 months old or older but not yet attending kindergarten;

(c) Care provided in the home of the child; or

(d) Care provided on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care.

(3) If any court of law finds that any clause, phrase, or provision of these rules is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portion of these rules.

(4) For purposes of these rules, the determination of compliance or noncompliance shall be made by CCD.

(5) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants for child care certification or operators of certified family child care homes.

(6) These rules apply only during the hours the provider is conducting the certified family child care business.

Stat. Auth.: ORS 657A
Stats. Implemented: ORS 657A.260 & 657A.280
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0700; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0010
Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0400, have the following meanings:

(1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.

(2) "Attendance" means children actually present in the home at any given time.

(3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.

(4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.

(5) "Certification" means the certification that is issued by CCD to a certified family child care home pursuant to ORS 657A.280.

(6) "Certified Family Child Care Home" or "Home" means: a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;

(e) By providers of medical services; or

(f) By a person who is a member of the child's extended family, as determined by the division on a case-by-case basis.

(8) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(9) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(10) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(11) "Criminal History Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(12) "Enrollment" means all children registered to attend the certified family child care home.

(13) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(14) "Infant" means a child who is at least 6 weeks of age but is not yet walking alone.

(15) "Night Care" means care given to children who sleep at the home for all or part of the night.

(16) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(17) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

(18) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(19) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(20) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked

rice, beans or pasta, and all other previously cooked foods, including leftovers.

(21) "Pre-school Age Child" means a child 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(22) "Professional Development Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(23) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(24) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certification is issued. In a certified family child care home, the provider is the operator.

(25) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(26) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(27) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year.

(28) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by certified capacity;

(c) Corporal punishment is being used;

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or

(g) Adults are in the home who are not enrolled in the Criminal History Registry.

(29) "Special Needs Child" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(30) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(31) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(32) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(33) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0705; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 5-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 10-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2004, f. 7-30-04 cert. ef 8-1-04; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0020
Application for a Child Care Certificate

(1) No person, unless exempted by Oregon laws governing child care facilities, shall operate a certified family child care home without a valid certification issued by the Child Care Division (CCD).

(2) Application for certification shall be made on forms provided by CCD.

(3) A completed application is required:

(a) For the initial certification;

(b) For the annual renewal of certification; and

(c) Whenever there is a change of provider or location.

(4) The applicant shall complete and submit an application to CCD at least:

(a) 45 days before the planned opening date of the certified family child care home; and

(b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) The expiration date of the current certification, the current certification, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certification, the certification will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(5) An application for certification shall be accompanied by a non-refundable filing fee.

(a) For the initial application, a change of provider, the reopening of a facility after a lapse in certification, or a change of location, the fee is $25 plus $2 for each certified space (e.g., the fee for a certified family child care home certified to care for 12 children is $24 + $25 = $49).

(b) For a renewal application, the fee is $2 for each certified space.

(6) An application for certification must be completed by the applicant and approved by CCD within 12 months of submission or the application will be denied. If an application is denied, an applicant will be required to submit a new application for certification.

(7) The applicant shall submit with the initial application or when the home is being remodeled a drawing showing the dimensions of all rooms to be used (length and width), the planned use of each room, the location of required exits, the placement of the kitchen and bathrooms, and the location of plumbing fixtures.

(8) The applicant shall provide verification to CCD that the home meets all applicable building codes and zoning requirements that apply to certified family child care homes:

(a) Before the initial certification is issued; and

(b) Whenever the home is remodeled.

(9) The home shall be approved by a environmental health specialist registered under ORS Chapter 700 or an authorized representative of the Department of Human Services before a certification is issued by CCD.

(10) The home may be inspected by the local fire jurisdiction when local ordinances require a fire life safety survey as part of a business license or when CCD determines there is a need to do so.

(11) If the provider applies to care for more than 12 children, the provider must complete a fire life safety self evaluation. CCD staff and the provider will review the self evaluation. If fire safety concerns are identified, CCD staff may consult with the fire marshal and after consultation, may request that the fire marshal complete a fire life safety inspection.

(12) Upon receipt of a completed application, a representative of CCD shall evaluate the home and all aspects of the proposed operation to determine if certification requirements (OAR 414-350-0000 through 414-350-0400) are met.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.270, 657A.280 & 657A.310
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0710; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0030
Issuance of a Child Care Certificate

(1) A certification shall be issued by CCD when it has been determined the home is in compliance with OAR 414-350-0000 through 414-350-0400. There are two types of certification. These are:

(a) A regular certification which, except as provided in OAR 414-350-0020(4)(b)(A), is valid for no more than one year; and

(b) A temporary certification. A certified family child care home may not operate under a temporary certification for more than 180 days in any 12-month period. A temporary certification is issued when:

(A) The home is in compliance with most requirements;

(B) There are no deficiencies identified by CCD that are hazardous to children; and

(C) The provider demonstrates an effort to be in full compliance.

(2) Certification is not transferable to any other location or to another organization or individual.

(3) A certification is granted in the name of the operator/provider. An operator/provider is limited to one certification at one address.

(4) An owner can have multiple sites under the following conditions:

(a) If the owner is the provider/operator in one of the homes, the owner can have two certified family child care homes; or

(b) If the owner does not directly care for any children, the owner can have more than two certified family child care homes.

(c) If the owner is the provider/operator in a home certified for more than 12 children, the owner may be the provider for only that certified family child care home. The provider may be the owner of other facilities. See OAR 414-350-0100 (5).

(5) Any changes in the conditions of certification shall be requested in writing to CCD and approved by CCD before the condition(s) of the current certification may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280, 657A.300 & 657A.310
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0715; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0050
General Requirements

(1) The following items shall be posted in the certified family child care home where they may be viewed by parents:

(a) The child care certification document;

(b) Notification of a communicable disease outbreak at the home;

(c) The evacuation plan; and

(d) A notice that the following items are available for parents to review:

(A) The guidance/discipline policy;

(B) The current week's menus, with substitutions recorded;

(C) The description of the general routine;

(D) Information on how to report a complaint to CCD regarding certification requirements; and

(E) The most recent CCD and sanitation inspection reports and fire life safety self evaluation (or fire marshal inspection report if completed).

(2) The provider shall ensure that a copy of these administrative rules is available in the certified family child care home to all parents and staff.

(3) Caregivers shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050) to the Department of Human Services or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(4) The certified family child care home shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(5) Representatives of all agencies involved in certification shall have immediate access to all parts of the home whenever the provider is conducting the child care business:

(a) CCD staff shall have the right to enter and inspect the home, including access to all caregivers, records of children enrolled in the home, and all records and reports related to the child care operation regarding compliance with these rules; and

(b) Representatives of the Department of Human Services and the State Fire Marshal have the right to enter and inspect the home when an inspection has been requested by CCD.

(6) Custodial parents of all children enrolled shall have access to the home during the hours their child(ren) are in care.

(7) The provider shall develop the following information in writing and shall make it available to CCD, to staff, and to parent(s) at the time of enrollment:

(a) Guidance and discipline policy;

(b) Information on transportation, when provided by the provider or other caregiver; and

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, fire, acute illness of a child or staff, natural disasters, power outages, and situations which do not allow reentry to the home after evacuation.

(8) The provider shall comply with the Department of Human Services' administrative rules relating to:

(a) Immunization of children (OAR 333-019-0021 through 333-019-0090);

(b) Reporting communicable diseases (OAR 333-019-0215 through 333-019-0415); and

(c) Child care restrictable diseases (OAR 333-019-0010).

(9) The provider shall report to CCD:

(a) An accident at the home resulting in the death of a child, within 48 hours after the occurrence; and

(b) Injuries to a child at the certified family child care home which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence.

(10) Documentation of meals and snacks provided by the certified family child care home shall be made available to CCD upon request, if the home does not participate in the USDA Child and Adult Care Food Program. Documentation is limited to the three weeks prior to the request.

(11) The provider is responsible for compliance with these requirements (OAR 414-350-0000 through 414-350-0400).

(12) Parental request or permission to waive any of the rules for certified family child care homes does not give the provider permission to do so.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.300, 657A.390 & 657A.400
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0720; CSD 9-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0100
The Provider

(1) The provider shall be:

(a) At least 18 years of age if the facility is certified for 12 children; or at least 21 years of age if the facility is certified for more than 12 children; and

(b) Responsible for the operation of the certified family child care home, including those duties ordinarily considered to be administrative. These include, but are not limited to, financial management, maintaining records, maintenance of the building and grounds, meal planning and preparation, compliance with certification requirements, communication with CCD, and correcting deficiencies.

(2) The provider shall have:

(a) At least one year of qualifying teaching experience, as specified in OAR 414-350-0010(25), in the care of a group of children in an ongoing group setting such as a kindergarten, preschool, child care center, certified family child care home, registered family child care home, or Head Start program; or prior to applying to be certified for up to 16 children, completed one year of successful operation as a certified family child care facility for 12 children if the qualifying teaching experience is based on registered family child care; or

(b) Completion of 20 credits (semester system) or 30 credits (quarter system) of training in a college or university in early childhood education or child development; or

(c) Documentation of attaining at least level eight in the Oregon Registry.

(3) The provider shall provide evidence of the following training prior to being certified:

(a) A current certification in infant and child first aid and cardiopulmonary resuscitation;

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completion of two hours of training on child abuse and neglect issues.

(4) Prior to a facility providing care to more than two children under 24 months of age, the provider shall have at least 30 clock hours of training specific to infant and toddler care. The provider of facilities certified on October 15, 2002, who are providing care for more than two children under 24 months of age must have documentation of 30 hours of prior training in infant and toddler care or a plan, approved by CCD, that shows how the training will be attained.

(5) The provider/operator shall be on-site at least half of the hours of operation that are reflected on the certification. If the facility is certified for more than 12 children, the provider shall be on site at least 2/3 of the hours of operation that are reflected on the certification. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences.

(6) The provider shall have no other employment, either in or out of the home, during the hours the provider is directly caring for children.

(7) The provider, or a substitute caregiver, shall be present during all the hours the certified family child care business is conducted.

(8) A caregiver substituting for the provider shall:

(a) Be at least 18 years old;

(b) Have current certification in infant and child first aid and cardiopulmonary resuscitation (CPR);

(c) Have current food handler certification pursuant to ORS 624.570, if the substitute will be preparing or serving food;

(d) Be familiar with the provider's policies and procedures and with these requirements (OAR 414-350-0000 through 414-350-0400;

(e) Be authorized and able to correct a deficiency that might be an immediate threat to children; and

(f) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a provider.

(g) Meet the qualifications in (a)-(f), have completed child abuse and neglect training, and have worked in the facility at least 60 hours when substituting for the provider in a facility certified to care for more than 12 children.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0732; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0120
Caregiver/Child Ratios and Supervision

(1) The number of caregivers and group size shall be determined by the number and ages of the children in attendance.

(a) All children in the home, including the provider's or other caregivers' own children, shall be counted in determining the caregiver/child ratio and group size.

(b) All children visiting the home on a regular basis will count in capacity. Children attending with a parent do not count as enrolled as long as the parent remains with and is responsible for non-enrolled children.

(c) The required caregiver/child ratios shall be met at all times.

(2) Children shall at all times have the full attention of and be supervised by the required number of caregivers.

(a) Children shall be within sight and/or sound of a caregiver at all times.

(b) A caregiver shall be near enough to children to respond when needed. Children out of direct visual contact shall be monitored regularly and frequently and must be in approved activity areas.

(c) Children may not be on a floor level of the home unless a caregiver is on the same floor level, except as specified in OAR 414-305-0120(2)(d).

(d) When bathroom facilities are not on the same floor level, a written plan for adequate supervision of both bathroom and child care areas shall be developed and implemented.

(3) The number of caregivers is determined by the age and number of the youngest child(ren) in the group. If the provider is certified to care for more than 12 children and plans to care for more than 8 infants and/or toddlers, the provider must develop a plan showing how infants and toddlers will be limited to a group size of not more than eight. The plan must be approved by CCD.

(a) If all children are in the same age group, the following table determines the staff/child ratio. [Table not included. See ED. NOTE.]

(b) If children in care include any infants and/or toddlers, the following table determines the staff/child ratio. [Table not included. See ED. NOTE.]

(c) If children in care include a mix of only preschool and school aged children, the following table determines the staff/child ratio. [Table not included. See ED. NOTE.]

(d) Even though staff/child ratios are specified in (a) and (b) above, a certified family child care provider may care for 10 children ages 6 weeks to school-age if:

(A) No more than 6 children are pre-school age or younger, including the provider's own children and any staff children;

(B) Of the 6, only 2 children are under 24 months of age; and

(C) Four of the children are school-age.

(4) The maximum number of children allowed in a certified family child care home at any one time is 16.

(5) If the home is certified to care for more than 12 children and the age blend is such that group separation is required:

(a)Groups may be joined for: meals, naps, outdoor play, and limited quiet activities such as a video or circle time.

(b)Provider must develop a plan that shows how the groups will be separated without requiring remodeling of the home. The plan must be approved by CCD.

(6) If the facility provides care to more than two children under 24 months of age, the provider shall meet the requirements specified in OAR 414-350-0100(4).

(7) Prior to a facility providing care to more than four children under 24 months of age, at least one caregiver other than the provider shall meet the requirements specified in OAR 414-350-0100(4). In addition, the provider shall have an extra 20 clock hours of training specific to infant and toddler care above and beyond the original requirements. If the facility is certified to care for more than 12 children, there must be someone who meets the training requirements of OAR 414-350-100(4) on site at all times that five or more children under 24 months of age are in care.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260 & 657A.290
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 7-1989, f. & cert. ef. 3-17-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0736; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0140
Indoor Area

(1) The indoor area used for child care shall meet the following requirements:

(a) If the provider is certified to care for 12 children or fewer, there shall be a minimum of 35 square feet of indoor activity area, as defined by OAR 414-350-0010(1), per child. If the provider is certified to care for more than 12 children, there shall be a minimum of 35 square feet of indoor activity area per child for 12 or fewer children, and 50 square feet of indoor activity area available per child for each of the additional four children. This space, considered in determining capacity of the home, shall be available for use by children at all times. The following shall not be counted as part of the 35 square feet per child requirement: heating units, storage areas; large permanent equipment; any space not useable by children.

(b) There shall be a designated area for children under 24 months of age that is developmentally appropriate and safe.

(c) If the facility is certified to care for more than 12 children, the provider must develop a written plan showing that the space accessible to the children meets their safety needs, there is adequate supervision and there is adequate availability of toileting and hand washing for the children in care. CCD must approve the plan.

(d) Activity areas shall be adequately lighted and ventilated. Room temperature shall be at least 68 degrees F. (20 degrees C.) and not so warm as to be dangerous or unhealthy to children in care.

(2) Indoor fixtures and equipment shall meet the following requirements:

(a) There shall be at least one flush toilet and one hand washing sink with mixing faucets available to the children at all times. If the facility is certified to care for more than 12 children, the provider must have a second flush toilet somewhere in the facility if: there are more than 15 children in care or if there are more than 12 toddlers in care. Homes with certification in effect on September 15, 2002, shall comply with the requirement for mixing faucets when bathroom facilities are remodeled.

(b) Easily cleanable steps or blocks shall be provided so that children can use the toilets and sinks without adult assistance.

(c) If bathroom facilities are not on the same floor level as the activity areas, the provider must comply with OAR 414-350-0120(2)(d).

(d) Telephone service shall be available in the home at all times when children are in care.

(e) Telephone numbers for fire, emergency medical care, and poison control, as well as the facility address, shall be posted on or near the telephone. Portable telephones must have emergency numbers and the facility address on the phone.

(f) There must be a system in place to ensure that parents can have contact with the provider and staff when children are in care.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0742; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0160
Sanitation

(1) Water Supply:

(a) The home's water supply shall be continuous in quantity and from a water supply system approved by the Department of Human Services.

(b) If drinking water is from a private source, the provider shall provide evidence of bacterial and chemical analysis which establish safety of the water;

(c) The tests shall be conducted by the local health department, the Department of Human Services, or an approved commercial laboratory;

(d) The bacterial analysis shall be done quarterly;

(e) The chemical analysis shall be done only once for a well and yearly for other water sources;

(f) The provider shall have drinking water available to children that is supplied in a safe and sanitary manner. If drinking water is obtained from bathroom sinks or sinks used for handwashing after changing a diaper, the sink must be sanitized after each handwashing.

(2) Hand Washing:

(a) Caregivers and children shall wash their hands with soap and warm running water after nose wiping, after using the toilet, and before and after eating;

(b) Caregivers shall wash their hands with soap and warm running water before and after changing a diaper, before and after feeding a child or handling food, and after assisting a child with toileting and nose wiping;

(c) Infants' and children's hands shall be washed with soap and warm running water after diaper changing;

(d) Staff shall immediately and thoroughly wash their hands after handling animals or cleaning cages;

(e) Commercial products labeled "hand sanitizers" shall not replace hand washing. If hand sanitizers are present in the home, they shall be kept under child-proof lock and shall not be used by children;

(f) When hand washing is not possible, e.g., on field trips or the neighborhood park, moist towelettes shall be used.

(3) Maintenance:

(a) The building, toys, equipment, and furniture shall be maintained in a clean, sanitary, and hazard-free condition:

(A) Kitchen and bathrooms shall be cleaned when soiled and at least daily;

(B) Floors, walls, ceilings, and fixtures of all rooms shall be kept clean and in good repair;

(C) All kitchen counters, shelves, tables, refrigeration equipment, sinks, drain boards, cutting boards, and other equipment or utensils used for food preparation shall be kept clean and in good repair;

(D) All food storage areas shall be kept clean and free of food particles, dust, dirt and other materials;

(E) Cloths, both single use and multiple use, used for wiping food spills on utensils and food-contact surfaces shall be kept clean and used for no other purpose. Cloths that are reused shall be stored in a sanitizing solution between uses.

(F) The isolation area shall be thoroughly cleaned after use and all bedding laundered after each use;

(G) A diaper-changing table shall:

(i) Have a surface that is non-absorbent and easily cleaned;

(ii) Be cleaned and sanitized after each use;

(iii) Not be used for any purposes other than diapering, including food or drink preparation or storage, dish washing, storage of food service utensils, arts and crafts supplies or products, etc.; and

(iv) Comply with the requirements for diaper changing area specified in OAR 414-350-0235(2)(b).

(H) Bathtubs, showers, sinks, bathinettes, or other receptacles used for bathing children shall be cleaned and sanitized after each use.

(I) Bedding shall be cleaned when soiled, with change of occupant, or at least once a week.

(b) Tableware, kitchenware (pots, pans and equipment), and food-contact surfaces of equipment shall be washed, rinsed, sanitized, and air-dried after each use. The cleaning and sanitizing of tableware and kitchenware shall be accomplished by using:

(A) A dishwasher that is operated according to the manufacturer's instructions; or

(B) A three-step manual process as follows:

(i) Washing in the first compartment;

(ii) Rinsing in a second compartment; and

(iii) Immersion in a third compartment or large dishpan or tub for at least two minutes in a sanitizing solution containing at least 2 teaspoons of household chlorine bleach in each gallon of warm water.

(c) A sink used for diapering or bathing activities shall not be used for any part of food or drink preparation or dish washing.

(d) Soap, paper towels dispensed in a sanitary manner, and mixing faucets with hot and cold running water shall be provided at each hand washing sink.

(e) The home and grounds shall be kept clean and free of litter or rubbish and unused or inoperable equipment, utensils, and vehicles.

(f) All garbage, solid waste, and refuse shall be disposed of at least once a week.

(A) All garbage shall be kept in watertight, non-absorbent, and easily washable containers with close-fitting lids;

(B) All garbage storage areas and garbage containers shall be kept clean; and

(C) All garbage storage shall be inaccessible to children.

(4) Insect and Rodent Control:

(a) The home shall be in such condition as to prevent the infestation of rodents and insects.

(b) Doors and windows which are opened for ventilation shall be equipped with fine-meshed screens.

(c) Automatic insecticide dispensers, vaporizers, or fumigants shall not be used.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.400 & 657A.420
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0746; CSD 10-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0170
Home Safety

(1) All floor levels used by children for play and napping shall have two usable exits to ground level.

(2) All rooms used by children for play and napping shall have two usable exits.

(3) Obstructions, including furniture, storage of supplies, or any other items shall not be placed in a manner that blocks usable exits.

(4) There shall be at least one 2-A-10 BC-rated fire extinguisher on each floor of the home. Fire extinguishers shall be easily accessible, kept out of the reach of children, and located along the path of emergency exiting.

(5) Smoke alarms shall be:

(a) Installed on each floor level of the home and in any area where children nap; and

(b) Maintained in operating order.

(6) Candles or other open flame decorative devices are prohibited, except for the brief use of celebratory candles.

(7) Matches and lighters shall be kept in locked storage when not in use.

(8) A portable light source, to be used in emergencies, shall be:

(a) Available in all activity areas used by children;

(b) In working condition; and

(c) Stored in an easily accessible place.

(9) Items of potential danger (e.g., cleaning supplies and equipment, paints, poisonous and toxic materials, plastic bags, aerosols, detergents) shall be:

(a) Kept in the original container or labeled;

(b) Stored under child-proof lock; and

(c) Kept away from food service supplies.

(10) The provider shall protect children from safety hazards, including but not limited to:

(a) A rigid screen or guard shall be installed to prevent children from falling into a fireplace or against a heater or wood stove;

(b) A movable barrier, such as mesh-type gate, shall be placed at the top and/or bottom of all stairways accessible to infants and toddlers. Gates and enclosures should have the Juvenile Products Manufacturers Assn. (JPMA) certification seal to ensure safety;

(c) Child-proof latches shall be installed on all cupboards, closets, and drawers that contain hazardous objects and may be accessible to preschool-age and younger children;

(d) Firearms, ammunition, and other potentially hazardous equipment, such as darts, other projectiles, power tools, and knives shall be kept under lock:

(A) Firearms, pellet or BB guns must be unloaded and kept in areas not used by child care children; and

(B) Ammunition shall be stored separately from firearms;

(e) Hot water heaters shall be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location;

(f) Unused appliances, such as old refrigerators or freezers, that present a risk for entrapment, shall be secured so as to prevent entry by children;

(g) Clear glass panels in doors shall be clearly marked at child level;

(h) All exposed electrical outlets in rooms used by preschool or younger children shall have hard-to-remove protective caps or safety devises when not in use;

(i) Extension cords shall not be used as permanent wiring. All appliance cords will be in good condition and multiple connectors for cords will not be used. A grounded power strip outlet with built-in over-current protection may be used;

(j) Floors shall be free of splinters, large unsealed cracks, sliding rugs, and other hazards;

(k) Devices which generate heat and are hot from recent use shall be inaccessible to children; and

(l) After painting or laying carpet, the certified home must be aired out completely for at least 24 hours with good ventilation before children are allowed to return.

(11) The provider shall have written evidence that any wood stove in the home has been inspected and approved for use by the local building official.

(12) All wood stove and fireplace flues shall be cleaned as needed or, at a minimum, once a year. A written record of cleaning shall be maintained on site.

(13) The use of unvented, fuel-fired space heaters is prohibited.

(14) Flammable and combustible liquids, such as paint thinner and gasoline, shall be stored in the original container or a safety container and, if over one gallon, kept in an unattached storage building.

(15) All caregivers and children shall practice at least one aspect of the emergency plan, as described in OAR 414-350-0050(7)(c), once per month.

(a) Evacuating the home shall be practiced at least eight times per year. If the facility is certified to care for more than 12 children and more than 4 children regularly in care are under 24 months of age, evacuating the home shall be practiced monthly.

(b) The provider shall maintain a written record showing the date, time of day, participants, and type of emergency of each emergency plan practice session.

(16) Other hazards observed in the certification process must be corrected.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280, 657A.290 & 657A.420
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0748; CSD 10-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0220
General Requirements

(1) There shall be activities for children according to their ages, interests, and abilities. If the provider is certified to care for more than 12 children the provider shall have a written program of activities for each age group.

(2) A description of the general routine, covering all hours of operation, shall be in writing and shall provide:

(a) Regularity of such activities as eating, napping, and toileting with flexibility to respond to the needs of individual children;

(b) A balance of active and quiet activities;

(c) Individual and group activities;

(d) Daily indoor and outdoor activities in which children use both large and small muscles;

(e) Periods of outdoor play each day when weather permits; and

(f) Opportunities for a free choice of activities by children.

(3) The provider and other caregivers shall use the written description of the general routine as a guide, allowing flexibility to respond to the needs of individual children and/or groups of children and to appropriate variations in daily activities.

(4) No child may view television or videos or play computer or electronic games for more than two hours per day.

(5) Infant and toddler program of activities. The following apply to infant and toddlers in care at the certified home.

(a) Infants shall be allowed to form and follow their own patterns of sleeping and waking periods.

(b) Children shall be given opportunities during each day to move freely by creeping and crawling in a safe, clean, warm, and uncluttered area.

(c) Throughout the day, each child shall receive physical contact and individual attention (e.g., being held, rocked, talked to, sung to, and taken on walks inside and outside the home).

(d) Routines relating to activities such as bedtime, feeding, diapering, and toileting shall be used as opportunities for language development, building the child's self-esteem, and other learning experiences.

(e) Children shall be encouraged to play with a variety of safe toys and objects.

(f) Children shall be given appropriate opportunities to use the five senses through sensory play.

(g) Infants shall be put to sleep on their backs.

(h) Immediate attention shall be given to the emotional and physical needs of the children. No child shall be routinely left in a crib except for sleep or rest.

(i) Caregivers shall encourage the development of self-help skills (dressing, toileting, washing, eating) as children are ready.

(j) In addition, toddlers shall be given opportunities to participate in:

(A) A variety of activities encouraging creative expression through the arts; and

(B) Running, climbing, and other vigorous physical activities.

(6) Preschool-age program of activities. In addition to the daily routine specified in OAR 414-350-0220(2), preschool-age children shall have opportunities, on a daily basis, to choose from a variety of activities and experiences, which shall include:

(a) Creative expression through the arts;

(b) Dramatic play;

(c) Gross (large) motor development;

(d) Fine (small) motor development;

(e) Music and movement;

(f) Opportunities to listen and speak;

(g) Concept development;

(h) Appropriate sensory play; and

(i) A supervised nap or rest period. Children who do not sleep after 20-45 minutes of quiet time must be provided with an alternative quiet activity. The activity may be in the same room where children are sleeping if it is not distracting to sleeping children.

(7) School-age program of activities. In addition to the daily routine specified in OAR 414-350-0220(2), school age children shall have opportunities to choose from a variety of activities, including:

(a) Individual or group projects and activities, including homework; and

(b) Rest or relaxation.

(8) A home providing swimming or other water activities to children shall meet all of the requirements set forth in OAR 414-350-0380.

(9) Spa pools on the grounds of the certified family child care home shall be enclosed by a barrier at least 48 inches high, with a lockable gate or door, and have a lockable pool cover. The enclosure and cover shall be locked whenever the child care business is being conducted.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0770; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0235
Infant and Toddler Furniture and Equipment

(1) Each infant shall have a crib, portable crib, or playpen with a clean, non-absorbent mattress that meets the following requirements:

(a) Each crib shall be of sturdy construction with vertical slats no more than 2 3/8" apart;

(b) Locks and latches on the dropside of the crib shall be safe and secure from accidental release or release by the infant inside the crib;

(c) Each mattress shall fit snugly; and

(d) Sleeping arrangements shall be appropriate to the cultural background of the infant, with individual bedding appropriate to the season.

(2) If infants and toddlers are in care there shall be:

(a) A bathtub, bathinette, plastic basin, or similar size shallow sink available for bathing children; and

(b) A diaper-changing area. The area shall be located so that handwashing can occur immediately after diapering without contact with other surfaces or other children.

(c) If the provider is certified to care for more than 12 children and more than 8 infants and toddlers are regularly in care, there must be a second diaper-changing area available.

(3) The diaper-changing table or area shall comply with the requirements specified in OAR 414-350-0160(3)(a)(G).

(4) If high chairs are used, they shall have:

(a) A broad base to prevent tipping;

(b) A latch to keep a child from raising the tray; and

(c) Straps to prevent a child from sliding out.

(5) Cribs, portable cribs, playpens, and high chairs must meet US Consumer Product Safety Commission or equivalent standards.

(6) Car seats are to be used for transportation purposes only. Children who arrive at the home asleep in a car seat may remain in the car seat until they awake.

(7) The use of baby equipment shall not substitute for providing a variety of stimulating experiences.

(8) The use of infant walkers is prohibited.

(9) The use of potty chairs must be approved by the environmental health specialist and/or by CCD.

Stat. Auth.: ORS 657A
Stats. Implemented: ORS 657A.260 & 657A.280
Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

414-350-0250
Transportation

When transportation is provided by or arranged for by the certified family child care home, the following requirements must be met.

(1) Drivers shall be at least 18 years of age and hold a current driver's license.

(2) The vehicle shall be:

(a) In compliance with all applicable state and local motor vehicle laws, and

(b) Maintained in a safe operating condition.

(3) If transportation is provided between the certified family child care home and the child's school or other destination, the provider shall have in writing an acknowledgment from the parent(s) that they are aware of the time of day their child is to be picked up and/or delivered by the provider. If the pick-up schedule results in children being unsupervised at school or other location, the provider shall notify parents of this fact.

(4) When transporting children:

(a) The emergency information for each child who is being transported shall be in the vehicle.

(b) Children shall be transported only in sections of vehicles designed for and equipped to carry passengers.

(c) A seat that fully supports the passenger shall be provided for each child.

(d) The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.

(e) All children shall be transported in accordance with ORS 811.210. The child safety system and safety belts shall comply with ORS 815.055 and the standards adopted by the Oregon Department of Transportation. A child under four years of age and weighing 40 pounds or less shall be in an approved child safety system. A child between the ages of 4 and 6 years AND children who weigh between 40 and 60 pounds, regardless of age, must use a booster seat.

(f) Staff/child ratios, as specified in OAR 414-350-0120, shall be maintained in vehicles, as well as in the certified family child care home, when one caregiver is transporting children.

(g) Infants, toddlers, and preschool age children shall leave the vehicle on the same side of the street as the building they will enter.

(h) Drivers delivering children to their homes shall not depart until the child has been received by an authorized person.

(i) No child shall be left unattended inside or outside a vehicle.

(j) If firearms and ammunition are stored in a vehicle, they must be stored as specified in OAR 414-350-0170(10)(d).

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0776; CSD 11-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06

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Landscape Contractors Board
Chapter 808

Adm. Order No.: LCB 5-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Adopted: 808-003-0260
Subject: OAR 808-003-0260 is adopted to implement SB 323 (Chapter 533, Oregon Laws 2005), relating to the definition of "independent contractor."
Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-003-0260
Independent Contractor

(1) As used in ORS Chapters 316, 656, 657,671 and 701, an individual or business entity that performs labor or services for remuneration is considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 and this rule are met.

(2) The Landscape Contractors Board, Construction Contractors Board, Employment Department, Department of Consumer and Business Services, and Department of Revenue of the State of Oregon, under the authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

Stat. Auth.: ORS 670 & 671
Stats. Implemented: ORS 670 & 671
Hist.: LCB 5-2005, f. 12-30-05, cert. ef. 1-1-06

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Rules Amended: 808-002-0200, 808-002-0250, 808-002-0340, 808-002-0360, 808-002-0500, 808-002-0730, 808-003-0010, 808-003-0015, 808-003-0035, 808-003-0040, 808-003-0045, 808-003-0060, 808-003-0105, 808-003-0110, 808-003-0130, 808-004-0320, 808-004-0600, 808-005-0020
Rules Repealed: 808-002-0298, 808-002-0460, 808-002-0600, 808-002-0720, 808-002-0735, 808-002-0745
Subject: These rules are being adopted, amended or repealed to be in compliance with 2005 Oregon Laws, Chapter 671, HB 2069. This includes: Allowing inactive status,Placing a licensee or owner of a business on probation if a business has more than 3 claims filed within a 12 month period, Change of jurisdiction from "decorative vegetation" to "nursery stock," Increased bonding requirements, Board may suspend a license without opportunity for a hearing if there are consumer protection issues or refuse to issue a license for certain criminal or fraudulent conduct, Makes it legal for employees of licensed landscaping businesses to perform landscape contracting work under the direct supervision of a licensed landscape contractor, Licensees may perform the repair of irrigation and water features, Licensees may repair backflow assemblies if also certified as a backflow tester with the Health Department, and Licensee may install patios and landscaping edging.

808-002-0150 - Defines Backflow Assembly

808-002-0200 - Clarifies Casual, Minor or Inconsequential work

808-002-0250 - Defines Construct Ornamental Water Features, Drainage Systems and Irrigations, and Irrigation Systems

808-002-0298 - Deletes definition for Decorative Vegetation because this phrase has been deleted from the statute

808-002-0328 - Defines Direct Supervision

808-002-0330 - Defines Dishonest or Fraudulent Conduct

808-002-0338 - Defines Drainage Systems

808-002-0340 - Clarifies Employ

808-002-0360 - Clarifies Employee

808-002-0455 - Defines Install

808-002-0460 - Deletes definition of Irrigation repair; is defined in 808-002-0810

808-002-0490 - Defines Landscape Edging

808-002-0495 - Defines Landscape Job

808-002-0500 - Deletes decorative vegetation and replaces with nursery stock in the definition of landscaping work

808-002-0600 - Deletes definition of LIBDI License

808-002-0650 - Defines Minority Shareholder

808-002-0720 - Deletes definition Nursery Stock; it is in statute

808-002-0730 - Clarifies Ornamental Water Features

808-002-0734 - Defines Owner

808-002-0735 - Deletes Owner or Holder of a Direct or Indirect Interest In a Person because this phrase has been deleted from the statute

808-002-0745 - Deletes Ornamental Water Feature Repair

808-002-0810 - Defines Repair of Ornamental Water Features, Drainage Systems and Irrigation, and Irrigation Systems

808-002-0875 - Defines Rough Grading

808-002-0885 - Defines Valid License

808-003-0010 - Clarifies advertising may only be done by a licensee with an active license

808-003-0015 - Adds requirement when applying for a business license to complete a statement of job charges, list all owners and the percent of ownership and submit copies of the original and amended articles of incorporation, organization filing or partnership agreements.

808-003-0035 - Renames section to License Categories and deletes LIBDI and replaces with Backflow Prevention.

808-003-0040 - Deletes LIBDI and replaces with Backflow Prevention and deletes devices and replaces with backflow assemblies

808-003-0045 - Deletes LIBDI and replaces with Backflow Prevention

808-003-0060 - Deletes LIBDI and replaces with Backflow Prevention and deletes devices and replaces with backflow assemblies

808-003-0105 - Deletes references to “Lapsed” licenses and clarifies no person may advertise without an active license.

808-003-0110 - Adds Irrevocable Letters of Credit and Deposits to this section and clarifies who should be listed on bond

808-003-0130 - Adds Irrevocable Letters of Credit and Deposits to this section.

808-003-0225 - Defines Terms of Probation

808-003-0230 - Adds section regarding requirement for renewal of business and individual contractor license

808-003-0235 - Inactive Status Generally

808-003-0240 - Clarifies inactive status requests at renewal

808-003-0245 - Clarifies inactive status requests other than at renewal

808-003-0250 - Clarifies renewal of inactive status

808-003-0255 - Clarifies converting from inactive to active status

808-004-0320 - Clarifies landscaping business license must have been active at time of delivery of materials or performance of work

808-004-0600 - Changes agency to board and clarifies bond or security payment

808-005-0020 - Replaces prevention device with assembly and LIBDI with Backflow Prevention; and adds penalty for failure of a landscaping business to maintain the correct amount of a surety bond or irrevocable letter of credit to $1,500 and suspension of the license until proper bonding amount obtained.

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-002-0150
Backflow Assembly

“Backflow assembly,” as used in ORS 671.615, means the combination of a backflow device and two manual control valves on either side of the device, and the plumbing in between.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0200
Casual, Minor, or Inconsequential

“Casual, Minor, or Inconsequential” work, as used in ORS 671.540(3)(c), includes:

(1) The replacement of trees and nursery stock with varieties that are similar in habit and culture;

(2) The reseeding of lawns;

(3) The decorative placement of rock (3” in diameter or less);

(4) The planting of annuals, perennials and bulbs in existing beds;

(5) The replacement of non-concrete landscape edging;

(6) In an irrigation system, the replacement of three or fewer malfunctioning sprinkler heads with heads of the same or of a similar type and hydraulic equivalency;

(7) In an irrigation system, the adjustment of sprinkler head nozzles; and

(8) In an irrigation system, the programming of irrigation controllers.

(9) “Casual, minor or inconsequential” work does not include the construction of new planting areas or the construction or repair of arbors, decks, driveways, fences, retaining walls, walkways or ornamental water features. “Casual, minor or inconsequential” work does not include the construction of drainage or irrigation systems.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0250
Construct Ornamental Water Features, Drainage Systems, Irrigation Systems

(1) As used in ORS 671.520(1)(c), to “construct” ornamental water features includes, but is not limited to:

(a) Excavating;

(b) Liner installation;

(c) Gravel, rock and boulder placement;

(d) Piping;

(e) Pump installation;

(f) Automatic fill installation;

(g) Mortaring;

(h) Concreting; or

(i) Filter installation.

(j) To construct ornamental water features does not include the installation of pre-fabricated systems that are self-contained and do not require construction on the site.

(2) As used in ORS 671.520(1)(c), to “construct” drainage systems includes, but is not limited to:

(a) Trenching;

(b) Installing drainage pipe or pipe fittings;

(c) Installing drainage filtering materials including filter fabric, gravel, or other natural or synthetic materials; or

(d) Backfilling.

(e) To construct drainage systems does not include installing drainage systems for buildings, basements, foundations, footings, roofs, or crawl spaces, unless done in conjunction with planting lawns, trees, shrubs, nursery stock or other landscape work.

(3) As used in ORS 671.520(1)(c), to “construct” irrigation systems includes, but is not limited to:

(a) Trenching;

(b) Installing irrigation pipe or pipe fittings, valves, control wires, sprinkler heads, emitters, nozzles, controllers or other elements of an irrigation system;

(c) Altering an existing irrigation systems; or

(d) Backfilling.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.520
Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0328
Direct Supervision

“Direct supervision” as used in ORS 671.540(15) and (16), means that a licensed landscape contractor supervises another person who performs landscaping work such that:

(1) The other person works under the instruction of the licensed landscape contractor;

(2) The licensed landscape contractor is responsible for the landscaping work performed by such other person; and

(3) The licensed landscape contractor is reasonably available to the other person such that, even if not physically on the job site, the licensed landscape contractor can be contacted and is available for consultation and able to provide direction during the time the landscaping work is being performed by such other person.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0330
Dishonest or Fraudulent Conduct

“Dishonest or fraudulent conduct,” as used in ORS 671.610(1)(o), includes, but is not limited to, the following:

(1) Acting in a manner that, because of a wrongful or fraudulent act by the applicant or licensee, has resulted in injury or damage to another person; or

(2) Failing to pay monies when due for materials or services rendered in connection with the applicant’s or licensee’s operations as a landscape business when the applicant or licensee has received sufficient funds as payment for the particular landscaping project or operation for which the services or materials were rendered or purchased; or

(3) Accepting payment in advance on a contract or agreement and failing to perform the work or provide the services required by the contract or agreement in a diligent manner and failing to return payment for unperformed work, upon reasonable and proper demand, within ten days of demand; or

(4) Displaying to the public false, misleading, or deceptive advertising whereby a reasonable person could be misled or injured; or

(5) Submitting a license application that includes false or misleading information; or

(6) Submitting a false statement to the board in order to qualify for a reduced bond or irrevocable letter of credit, as required by ORS 671.690; or

(7) Failing to pay minimum wages or overtime wages as required under state or federal law; or

(8) Failing to comply with the state Prevailing Wage Rate Law, ORS 279.348 to 279.380; or

(9) Failing to comply with the federal Davis-Bacon and related acts when the terms of the contract require such compliance; or

(10) Failing to pay wages as determined by the Bureau of Labor and Industries, Wage and Hour Division; or

(11) Failing to timely pay a civil penalty or fine imposed by a unit of local, state or federal government; or

(12) Presenting for payment to the board a check that subsequently is returned to the agency due to non-sufficient funds or closure of the account; or

(13) Misrepresenting the employment relationship between a landscaping business and a landscape contractor.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0338
Drainage Systems

"Drainage Systems," as used in ORS 671.520(1)(c), mean assemblies of piping and fittings that are used to drain lawns, trees, shrubs, and nursery stock and other landscape work. "Drainage Systems" do not include systems used solely to drain roofs, foundations, footers, buildings, basements, or crawl spaces unless done in conjunction with landscape work. Drainage systems do not include systems used to drain agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0340
Employ

"Employ," as used in ORS 671.530(5) and 671.565(1)(b), means to hire an employee, as defined in OAR 808-002-0360, and thereafter be subject to ORS Chapters 654, 656, 657 and state and federal wage and hour laws.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.530 & 671.565
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0360
Employee

"Employee" means any individual working for remuneration who does not meet the requirements of an independent contractor in ORS 670.600.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 305, 314, 316, 317, 318, 656, 657, 671.525, 671.520, 671.565, 671.660 & 447.060
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0455
Install

(1) For the purpose of ORS 671.520 "install" means the planting of lawns, trees, shrubs, vines and nursery stock. For the purpose of this rule, planting includes, but is not limited to, the excavation of the planting pit or hole, physically moving the plant into the pit or hole, backfilling the pit or hole, compacting the backfill and staking the plant if necessary.

(2) Installing does not include:

(a) the placement of mulching materials which includes, but is not limited to bark dust, chips, husks, shells or compost; and

(b) the planting of nursery stock for commercial sale or reforestation.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0490
Landscape Edging

"Landscape edging," as used in ORS 671.520(1)(d), means concrete, metal, plastic, wood or other material that is used to separate different planting elements of a landscape from each another.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0495
Landscape Job

"Landscape job," as used in ORS 671.690(1) means landscaping work subject to ORS 671.510 to 671.710 performed on a specific site, under one or more contracts, with the same owner and undertaken and completed within a 12-month period.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0500
Landscaping Work

(1) "Landscaping Work," as used in ORS 671.540 and 671.660(5), means the planning or installing of lawns, shrubs, vines, trees, and nursery stock including the preparation of property on which the vegetation is to be installed, the construction or repair of ornamental water features, drainage systems and irrigation systems for lawns, shrubs, vines, trees and nursery stock. For the purposes of this rule, "preparation of property" includes, but is not limited to, the adding and incorporating of soil amendments, importation of topsoil, removal of soil and final grading to the specified aesthetic and drainage needs of a site on which landscaping work is to be performed.

(2) "Landscaping work" includes the planning and installing of fences, decks, arbors, patios, landscape edging, driveways, walkway and retaining walls.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.530, 671.540 & 671.660
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0650
Minority Shareholder

"Minority shareholder," as used in Chapter 609 Oregon Law 2005 section 7(2)(a) means a shareholder of a corporation who owns or controls less than one-half the total shares outstanding.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0730
Ornamental Water Features

"Ornamental Water Features," as used in ORS 671.520(5), means outdoor fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions including shallow, decorative pools (singularly or in combination with others), or streambeds constructed of material such as liners, gravel, rocks, boulders, or concrete. Ornamental water features may include piping, pumps, or a filtration system. Ornamental water features do not include prefabricated systems which are self contained and do not require construction on the site.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Sec. 14, Ch. 409, OL 2001
Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0734
Owner

(1) "Owner," as defined in Chapter 609, Oregon Laws 2005, Section 7(1)(d) means:

(a) A person described in Chapter 609, Oregon Laws 2005, section 7(1)(d);

(b) A general partner in a limited partnership;

(c) A majority stockholder in a limited partnership;

(d) A manager in a manager-managed limited liability company;

(e) A member in a member-managed limited liability company; or

(f) A person who has a financial interest in a business and manages or shares in the management of the business.

(2) For purposes of this rule, "manages or shares in the management" means to have a position in the business that is accountable for exercising delegated authority over the human and financial resources to accomplish the objectives of the business which may include, but is not limited to, the performance of the planning, directing, implement, organizing, evaluation, supervising or administering the operations of the business.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0810
Repair Ornamental Water Features, Drainage Systems, Irrigation Systems

(1) As used in ORS 671.520(1)(c), "repair" ornamental water features includes, but is not limited to:

(a) Liner patching;

(b) Rock and boulder replacement;

(c) Mortaring; or

(d) Pump replacement.

(e) Repair of ornamental water features does not include draining, cleaning or refilling ornamental water features.

(2) As used in ORS 671.520(1)(c), "repair" drainage systems includes, but is not limited to:

(a) Patching; or

(b) Replacement of piping, fittings and filtering materials.

(3) As used in ORS 671.520(1)(c), "repair" irrigation systems includes, but is not limited to:

(a) Replacing any irrigation water line;

(b) Draining water from an existing irrigation systems by disconnecting the system, forcing water out of the system through the use of compressed air and reconnecting the system; or

(c) Disassembling and replacing the internal parts of backflow assembly when performed pursuant to ORS 447.060(3).

(d) Repair of irrigation systems does not include replacing three or fewer sprinkler heads with the same or similar type and hydraulic equivalency sprinkler heads, adjusting sprinkler head nozzles; or programming irrigation controls.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0875
Rough Grading

"Rough grading," for purposes of ORS 671.540(5), means the movement of earth by cutting and/or filling of a site to establish proper sub-grade elevations prior to the preparation and establishment of the final grade for seed beds or tree or shrub planting. Rough grading does not include grading done by raking or other mechanical means to establish a grade that is suitable for planting.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-002-0885
Valid License

"Valid license," as used in ORS 671.530(1), means a license that is active.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.530(1)
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0010
Advertising

(1) All written advertising, except telephone and internet directory line listings, shall include the landscaping business license number.

(2) Advertising shall include, but not be limited to:

(a) Newsprint classified advertising and newsprint display advertising for work subject to ORS 671.510 through 671.710;

(b) Telephone or internet directory space ads, display ads and line listings;

(c) Business cards;

(d) Business flyers;

(e) Business letterhead;

(f) Business signs at construction sites; and

(g) Websites.

(3) No person shall advertise under the heading of "landscape contractor" or any other heading that would lead any person to believe the business is a landscape contracting business in any advertising media unless the person holds an active landscape contracting business license.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.530
Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0012; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0015
Application for Landscaping Business and Landscape Contractor License

(1) Application for a landscaping business license shall be on forms provided by the agency and shall be accompanied by:

(a) Required application fee;

(b) Surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(c) Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than $100,000 listing the Landscape Contractors Board as the certificate holder;

(d) List of licensed landscape contractors, with accompanying license numbers, employed by the business as required under ORS 671.565. A business may meet the requirements of ORS 671.565, not withstanding the conditions or ORS 657.044, if the licensed landscape contractor is a sole proprietor, a member of an LLC, a general partner in a partnership, or a stockholder of a Sub Chapter S-Corp and is actively involved in the landscaping business' operations and is receiving remuneration, whether by salary or other payment, for services provided.

(e) A signed statement by the owner of the business, on which the landscaping business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license;

(f) List of all owners and percent of ownership of each owner;

(g) Copies of the original and amended articles of incorporation for corporations, organizational filings for limited liability companies, and partnership agreements for partnerships; and

(h) List of all assumed business names under which the landscaping business is conducted. The business entity name and all assumed business names listed must be the same as what appears on record with the Corporation Division, if applicable.

(2) Application for a landscape contractor license shall be on forms provided by the agency and shall be accompanied by:

(a) Required application and examination fees;

(b) Verification of experience and/or transcripts or copies of completion certificates from courses of study; and

(c) If applicable, name of employing licensed landscaping business or businesses.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.560 & 671.565
Hist.: LC 3, f. & ef. 2-7-77; LC 3-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0015; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2005, f. & cert. ef. 10-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0035
License Categories

(1) Licenses may be issued only for the following:

(a) All Phase;

(b) Standard; or

(c) Irrigation and Backflow Prevention.

(2) Except as set forth in section (3) of this rule, the following previously-issued limited licenses shall remain valid so long as the licensee continues to renew the license:

(a) General;

(b) Irrigation;

(c) Irrigation and Backflow Prevention;

(d) Sod & Seed; and

(e) Trees.

(3) The "All Phase" license shall include standard, irrigation, and Backflow Prevention, unless, in lieu of Backflow Prevention, the landscape contractor has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work, with the penalty for violation of the agreement being $1,000 and suspension of the license.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.560
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0020; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 1-1994, f. 5-26-94, cert. ef. 6-1-94; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0040
Limitation of Service by License

(1) A licensed landscaping business shall perform only those phases of landscape contracting for which its employed landscape contractors are licensed.

(2) The landscape contracting service or services a licensed landscaping business offers shall be limited to the following:

(a) An all phase license holder is entitled to perform all areas of landscape contracting, including the installation of backflow prevention devices unless, in lieu of Backflow Prevention, the landscape contractor has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work;

(b) A general limited license holder may perform all landscape contracting functions except irrigation and the installation of backflow assemblies;

(c) An irrigation; no backflow limited license holder may only perform irrigation functions;

(d) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(e) A tree limited license holder may only install new or transplant trees;

(f) A standard limited license holder may perform all areas of landscape contracting except irrigation and the installation of backflow assemblies;

(g) An irrigation plus backflow license holder may perform only irrigation and the installation of backflow assemblies.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by plumbers licensed by the State Plumbers Board or by licensed landscape contractors who have been qualified by examination to install backflow assemblies and who are either employees or owners of landscaping businesses. If the backflow assembly is installed by a landscape contractor, the landscape contractor shall obtain all required permits and shall install the backflow assemblies in conformance with the permits;

(b) If a landscape contractor or a landscaping business fails to obtain permits to tap into the potable water system and install irrigation or ornamental water feature backflow assemblies or fails to comply with applicable code requirements, in addition to any other remedy, the Board may suspend, condition or revoke the landscape contractor and the landscaping business license.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 447.060 & 671.560
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0045
Change to Limited Licenses

(1) Landscape contractors holding limited licenses may add to the phase of landscape contracting they perform by taking and passing additional sections of the exam. Licensees shall submit the required fees and a written request to take the additional sections of the exam.

(2) The following sections must be taken and passed to hold a standard landscape license:

(a) General license holders must take Laws and Rules, General A, General B, General C, and General D;

(b) Sod & Seed license holders must take General A, General B, General C, and General D.

(c) Tree license holders must take General A, General B, General C, and General D.

(3) Holders of a General license, Sod & Seed license or a Tree license must take and pass the irrigation and Backflow Prevention sections of the landscape examination to become licensed to perform irrigation work and install backflow prevention devices.

(4) If a landscape business' phase of license changes because its employed landscape contractors' phases of license changes or because an employed landscape contractor ceases to be employed by the business, the business shall notify the agency in writing within ten (10) days of the change of license phase to obtain an updated license.

(a) If the individual license holder for a business leaves the employ of the business, the individual license holder must notify the agency in writing (regular mail, fax or email) within ten (10) days of date of departure; and

(b) The business for which this licensee worked must immediately stop performing those phases of landscape contracting work until they have an owner or employee who is licensed to perform those phases of landscape contracting work.

(5) When license limitations change, the agency will issue new a license at no cost to the licensee. The landscape business shall not offer or perform services for which it does not employ or have as an owner a corresponding landscape contractor licensed to perform those phases of landscape contracting.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.560
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; Renumbered from 808-010-0022; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0060
Examinations

(1) The exam will consist of the following sections:

(a) Laws & Rules which includes Contract Law, General Business, and Agency Involvement;

(b) General which includes the following sections:

(A) Plants and turf;

(B) General construction;

(C) Grading and drainage; and

(D) General safety, estimating, soil science, chemicals.

(c) Irrigation, which includes, but is not limited to pipes and fittings, electrical, head and nozzles, Hydraulics, installation/practical application, plan questions, winterizing, repair/troubleshooting, valves, plant culture, drip irrigation, design, and pumps.

(d) Backflow Prevention, which includes, but is not limited to irrigation and ornamental water feature backflow assemblies, piping, valves, and related plumbing code provisions.

(2) All applicants must take and successfully pass the Laws & Rules section.

(3) If an applicant desires to be able to perform all landscaping including irrigation and the installation of the backflow assemblies, the applicant must take and successfully pass the Laws & Rules, General, Irrigation and Backflow Prevention sections.

(4) If an applicant desires to be able to perform all landscaping except irrigation and the installation of the backflow assemblies, the applicant must take and successfully pass the Laws and Rules and General sections.

(5) If an applicant desires to be able to perform only irrigation and the installation of the backflow assemblies, the applicant must take and successfully pass the Laws and Rules, Irrigation and Backflow Prevention sections.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 671.570
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0025; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0105
License Cards

(1) A license card issued to a landscaping business is valid for the term for which it is issued only if the following conditions are met throughout the license period:

(a) The business has a licensed landscape contractor as an owner or as an employee at all times; and

(b) The surety bond remains in effect and undiminished by payment of Landscape Contractors Board final orders; and

(c) The insurance required by ORS 671.565 remains in effect; and

(d) If the licensee is a sole proprietorship, survival of the sole proprietorship; or

(e) If the licensee is a partnership or limited liability partnership, no change in the composition of that partnership, by death or otherwise; or

(f) If the licensee is a corporation or limited liability company, survival of that corporation or limited liability company, including compliance with all applicable laws governing corporations or limited liability companies.

(2) If a license is no longer valid, the agency may require the return of the license and pocket card(s).

(3) No person shall advertise or otherwise hold out to the public that person's services as a landscaping business unless that person holds an active license, nor shall any person claim by advertising or by any other means to be licensed, bonded, insured, or licensed unless that person holds an active license.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.560 & 671.565
Hist.: LCB 2-2002, f. & cert. ef. 5-24-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0110
Bonds, Irrevocable Letters of Credit and Deposits

(1) The landscaping business name must be the same on the bond as it appears on the records of the Corporation Division, if applicable.

(a) If the landscaping business is a sole proprietorship, only the name of the owner shall appear on the bond or irrevocable letter of credit;

(b) If the landscaping business is a partnership or joint venture, all partners or joint venturers (other than limited partners) shall be listed on the bond or irrevocable letter of credit;

(c) If the landscaping business is a limited partnership, the names of all the general partners shall appear on the bond or irrevocable letter of credit;

(d) If the landscaping business is a corporation or trust, only the corporate name or trust name shall appear on the bond or irrevocable letter of credit;

(e) If the landscaping business is a limited liability company, only the limited liability company name shall appear on the bond or irrevocable letter of credit.

(2) If at any time the landscaping business changes its business entity form or its business name, the landscaping business must notify the board within 30 days from the date of the change. The landscaping business may be required to post a new bond or irrevocable letter of credit if the current bond or irrevocable letter of credit cannot be amended to cover the new business entity or new business name Alternatively, if acceptable to the board under ORS 671.690(3), the landscaping business may be required to transfer cash or negotiable securities on deposit for the benefit of the new business entity.

(3) If the bond, irrevocable letter of credit or deposit is reduced to less than the amount required by ORS 671.690, the landscaping business shall immediately file a replacement bond, a replacement irrevocable letter of credit, a rider on the existing bond, an amended irrevocable letter of credit, or increase the deposit permitted by ORS 671.690(3), if applicable, so that the amount on deposit is equal to or greater than the amount required by ORS 671.690.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.690
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0031; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0130
Fees

(1) Initial license or renewal of active license:
(a) Landscaping business, $225.
(b) Landscape contractor, $75.
(2) Renewal of inactive license:
(a) Landscaping business, $225.
(b) Landscape contractor, $75.
(3)Late penalty fee:
(a) Landscaping business, $25.
(b) Landscape contractor, $25.
(4) Individual Landscape Contractor License Application fee: $60.
(5) Initial examination fee for any phase of license is:
(a) $15 for first section of the exam; and
(b) $10 for each additional section per exam sitting.
(6) Exam retake fees for any section of the exam is:
(a) $15 for first section of the exam; and
(b) $10 for each additional section per exam sitting.
(7) Exams sent to the DMV, additional processing and mailing fee: $12.
(8) Examination, failure to show for a scheduled appointment:
(a) In board office, $20 without a 24 hour advance cancellation notice to the board office.
(b) At Proctor Exam Site, forfeits full payment for that exam sitting.
(9) If a landscape contractor license expires, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(10) If a landscaping business license expires, and the landscaping business has continuously maintained its bond, irrevocable letter of credit or deposit together with required liability insurance, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement will be retroactive to the expiration date.

(11) If a landscaping business license expires, and no bond, irrevocable letter of credit or deposit, or required liability insurance, has been in effect during the interim, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement date will be the date the required fee and documentation are received in the board office.

(12) Payments received after board deadlines, including, but not limited to payments for renewals, applications and civil penalties will be considered late and penalties shall be assessed.

(13) The board may waive the late fee if:
(a) The properly completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or
(b) The licensee's failure to meet the renewal date was caused entirely or in part by an board error or omission.

(14) The board may waive the failure to show for a scheduled examination appointment fee for good cause. Documentation may be required.

Stat. Auth.: ORS 183.310 - 183.545, 670.310 & 671.670
Stats. Implemented: ORS 671.650 & 671.660
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1983(Temp), f. 10-14-83, ef. 10-15-83; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0035; LCB 3-1988(Temp), f. 4-11-88, cert. ef. 5-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1989(Temp), f. 5-16-89, cert. ef. 7-1-89; LCB 2-1989, f. & cert. ef. 7-24-89; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1997(Temp), f. & cert. ef. 6-10-97; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-2002, f. & cert. ef. 7-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0225
Terms of Probation

The board may place a landscaping business, landscape business owner or landscape contractor on probation pursuant to Chapter 609, Oregon Laws 2005, section 4. In placing a landscaping business, landscape business owner or landscape contractor on probation, the board may, in addition to imposing conditions outlined in Chapter 609, Oregon Laws 2005 section 4(3) and (4), require that the landscaping business, landscape business owner or landscape contractor:

(1) Submit to the board copies of all written contracts entered into during the period of probation;
(2) Submit to the board copies of all billing invoices (or those that the board specifies) issued during the period of probation;
(3) Submit copies to the board of all permits required for landscaping work during the period of probation;
(4) Authorize the board to contact the customers of the landscaping business and supply to the board the names, addresses and phone numbers of such customers; and
(5) Maintain a log of site visits and customer contacts during the period of probation.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0230
Renewal of Landscaping Business and Landscape Contractor License

(1) Application for renewal of a landscaping business license shall be on forms provided by the agency and shall be accompanied by:
(a) Required renewal fee;
(b) Proof of surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;
(c) Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than $100,000 listing the Landscape Contractors Board as the certificate holder;
(d) List of licensed landscape contractors, with accompanying license numbers, employed by the business as required under ORS 671.565;
(e) A signed statement by the owner of the business, on which the landscaping business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license; and
(f) List of all owners and percent ownership of each owner;
(2) Application for renewal of a landscape contractor license shall be on forms provided by the agency and shall be accompanied by:
(a) Required renewal fee;
(b) If applicable, name of employing licensed landscaping business or businesses.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.565 & Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0235
Inactive Status Generally

(1) A licensee may not convert a license to inactive status if the licensee is engaged in work as a landscaping business or is operating as a landscape contractor;
(2) A licensee may not offer to undertake, advertise for, submit a bid to, obtain a permit for, or perform landscaping work while in inactive status;
(3) A licensee shall notify the board of any change of address while in inactive status. While the licensee is inactive, the board will send notices and communications to the licensee at the licensee's last known address of record.
(4) To convert to inactive status:
(a) A licensee must have a current active license;
(b) If the licensee was subject to discipline or probation by the board, the licensee must satisfy any conditions imposed by the board as a result of the discipline;
(c) The licensee must submit a request to convert to inactive status on forms provided by the board; and
(d) The licensee must comply with OAR 808-003-0240 or 808-003-0245.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0240
Inactive Status Request at Renewal

(1) A request to convert a license to inactive status made at the time of renewal of the license must be accompanied by fees required under OAR 808-003-0130.

(2) If a license is converted to inactive status at the time of renewal of the license, the effective date of the renewed license shall be the expiration date of the previous license.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0245
Inactive Status Request Other than at Renewal

(1) A request to convert a license to inactive status made prior to the expiration date of the license, but at a time other than the time of renewal of the license, will be accepted only if the licensee making the request has paid all applicable fees under OAR 808-003-0130.

(2) If a license is converted to inactive status prior to the expiration date of the license, but at a time other than the time of renewal of the license, the effective dates of the license will remain unchanged and the license will expire on the upcoming expiration date.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0250
Renewal of Inactive Status

To renew an inactive license in an inactive status:

(1) The licensee must submit the request to renew the license in inactive status on forms provided by the board;

(2) The licensee must submit the fees required under OAR 808-003-0130.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-003-0255
Converting from Inactive to Active Status

(1) To convert from inactive status to active status, a licensee must:

(a) Submit a request to convert to active status on forms provided by the board;

(b) If the licensee is a landscaping business, submit a surety bond, irrevocable letter of credit or deposit as required by ORS 671.690;

(c) If the licensee is a landscaping business, submit proof of insurance as required by ORS 671.565(1)(e); and

(d) Comply with all other licensing requirements as prescribed by the board.

(2) If a licensee requests conversion from an inactive to active status at the time of renewal, the licensee must submit all fees required under OAR 812-003-0130.

(3) If a licensee requests conversion from inactive to active status other than at the time of renewal, the licensee must be current to date upon all fees due and owing under OAR 812-003-0130.

(4) If a license is converted from inactive to active status, the board shall establish the effective date of the license. The expiration date of the license will remain unchanged.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Ch. 609, OL 2005
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-004-0320
Jurisdictional Requirements

(1) A claim must be of a type described under ORS 671.690(2)(c) and OAR 808-002-0220.

(2) The agency will only process a claim that is filed within the following time limitations:

(a) State tax and contribution claims must be filed within one year of the due date of the tax or contribution.

(b) Labor, material and equipment claims must be filed within one year of the delivery date of the labor, material or equipment.

(c) Negligent or improper work claims must be filed within one year following the date the work was completed.

(d) Breach of contract claims must be filed within one year of the contract date or the last date of work on the project, whichever is later.

(3)(a) A claim will be processed only against a licensed landscaping business.

(b) For a State tax and contribution claim, the landscaping business against which the claim is filed will be considered licensed if the tax and contribution liability arose while the business was licensed.

(c) For a material claim, the landscaping business against which the claim is filed will be considered licensed if one or more invoices involve material delivered while the landscaping business was actively licensed. Damages will be awarded only for material delivered within the period of time that the landscaping business was actively licensed.

(d) For any other claim, the landscaping business against which the claim is filed will be considered licensed if the landscaping business was actively licensed during all or part of the work period.

(4) A labor, material and equipment claim, negligent or improper work claim or breach of contract claim will be accepted only when one or more of the following relationships exist between the claimant and the licensed landscaping business:

(a) A direct contractual relationship based on a contract entered into by the claimant and the landscaping business, or their agents; or

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim.

(5) A claim by a person furnishing material, or renting or supplying equipment to a landscaping business may not include a claim for non-payment for tools sold to a landscaping business, for equipment sold to the landscaping business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(6) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for installation or use on property located within the boundaries of the State of Oregon.

(7)(a) Except as provided in subsection (b) of this section, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 671.510 to 671.710 that is the same as an allegation contained in a claim previously filed by the same claimant against the same landscaping business.

(b) The agency may process a claim that would otherwise be dismissed under subsection (a) of this section if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in this section extends the time limitation for filing a claim under ORS 671.710.

Stat. Auth.: ORS 183, 670.310 & 671.670
Stats. Implemented: ORS 671.703
Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0020; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-004-0600
Payment from Bond or Security

(1) The board may notify the surety of claims pending.

(2) The board shall notify the surety company or deposit holder of claims ready for payment. Claims are ready for payment when all of the following have occurred:

(a) An arbitration award has been issued and is ready for payment under OAR 808-008-0440 after 30 days have elapsed to allow the respondent time to pay the award or file exceptions with the circuit court or a final order has been issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order;

(b) The board has received no evidence that the respondent has complied with the final order or award;

(c) The board has not granted a stay of enforcement of the final order pending judicial review by the Court of Appeals; and

(d) All other claims filed against the licensee under ORS 671.510 to 671.710 within the same or prior 90-day period under ORS 671.710 have either been resolved, been closed or have reached the same state of processing as the subject claim.

(3) Claims related to jobs that are satisfied from a surety bond or deposit shall be paid as follows:

(a) If a surety bond or deposit was in effect when the work period began, payment shall be made from that surety bond or deposit.

(b) If no surety bond or deposit was in effect when the work period began, but a surety bond or deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond or deposit to become effective after the beginning of the work period.

(4) If during a landscape job the job charges increase to an amount that requires an increase in the bonding amount for a landscaping business, any claims filed on that specific landscape job and any other landscape jobs contracted for by this business after the effective date of the increased bond amount will have access to the higher bond amount. Landscape jobs that were contracted for before the effective date of a bond increase will only

have access to the bond amount in effect at the time of entering into the contract for that job unless the job charges on that contracted job increase to an amount requiring an equal to or greater bond amount for the landscaping business.

(5) The full penal sum of the bond shall be available to pay claims under this rule, notwithstanding that the penal sum may exceed the bond amount required under ORS 671.690.

(6) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a claimant and payment is due from the surety bonds or deposits of the respondents, payment shall be made in equal amounts from each bond or deposit subject to payment. If one or more of the bonds or deposits is or becomes exhausted, payment shall be made from the remaining bond or deposit or in equal amounts from the remaining bonds or deposits. If one of the respondents liable on the claim makes payment on the claim, that payment shall reduce the payments required from that respondent's bond or deposit under this section by an amount equal to the payment made by the respondent.

(7) A surety company may not condition payment of a claim on the execution of a release by claimant.

(8) An expired or terminated status of the license of the respondent does not excuse payment by a surety company required under this rule.

Stat. Auth.: ORS 183, 670.310 & 671.670
Stats. Implemented: ORS 671.690 & 671.710
Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88;LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-004-0060; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

808-005-0020
Schedule of Civil Penalties

The board may assess civil penalties according to the following schedule, which may be adjusted per the terms of a settlement agreement:

(1) For operating as a landscaping business in violation of ORS 671.530(3) or (4), $1,000.

(2) For operating as a landscaping business in violation of ORS 671.530(3) or (4), when a claim has been filed for damages arising out of that work, $2,000.

(3) For operating as a landscaping business in violation of ORS 671.530(3) or (4), when one or more previous violations have occurred, $2,000.

(4) For advertising in violation of ORS 671.530(2) or (4), $600.

(5) For advertising in violation of ORS 671.530(2) or (4) when one or more previous violations have occurred, $1,000.

(6) For operating as a landscaping business without employing at least one licensed landscape contractor licensed within the phase of work performed, in violation of OAR 808-003-0040 and 808-003-0045, $500.

(7) For performing landscaping work while not subject to a written contract, in violation of ORS 671.625(2) and OAR 808-002-0020:

(a) Warning for the first offense;

(b) $200 for the second offense occurring after action taken on first offense; and

(c) $500 for subsequent offenses.

(8) For failure to include the license number in all written advertising, in violation of OAR 808-003-0010:

(a) Warning for the first offense;

(b) $200 for the second offense occurring after action taken on first offense; and

(c) $500 for subsequent offenses.

(9) For performing work outside the scope of the landscaping business license in violation of OAR 808-003-0040, $500.

(10) For installation of an irrigation backflow assembly or tapping into the potable water supply:

(a) In violation of OAR 808-003-0040, $500; or

(b) In violation of a written agreement with the Board as provided in OAR 808-003-0035 and 808-003-0040, $1,000 and suspension of the license until Backflow Prevention license is obtained.

(11) For failure to maintain the insurance required by ORS 671.565 or bond as required by ORS 671.690 in effect continuously throughout the license period, $500.

(12) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, if the licensee, in performance of work subject to ORS 671.510 to 671.710, causes damage to another entity or to the property of another person for which that entity or person could have been compensated by an insurance company had the required insurance been in effect, $2,000, in addition to such other action as may be authorized by statute.

(13) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710, $1,000 and suspension of the license until the applicant provides the agency with proof of conformance with the application.

(14) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by ORS 671.510 to 671.710, $1,000 and suspension of the license until the applicant provides the agency with proof of compliance with the statutes.

(15) Violating an order to stop work as authorized by ORS 671.510 to 671.710, $1,000 per day.

(16) For failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply with applicable plumbing code requirements, $500.

(17) Failure to obtain the appropriate building code permit(s), $500.

(18) When as set forth in ORS 671.610(5), the number of licensed landscaping businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) $1,000 for the first offense;

(b) $2,000 for the second offense;

(c) Six month suspension of the license for the third offense; and

(d) Three-year revocation of license for a fourth offense.

(19) Failure of a landscaping business to notify the board of a change in the landscaping business' phase of license as required by OAR 808-003-0045(4), $500.

(20) Failure by the landscaping business to provide a signed Verification of Employment form with the application or renewal of the business license, refuse to issue or renew the license until the agency receives the Verification of Employment form.

(21) Failure by the landscape contractor to comply with the supervisory responsibilities as required by OAR 808-003-0018;

(a) $200 for the first offense;

(b) $500 for the second offense occurring after action taken on first offense; and

(c) $1,000 and six month suspension of the license for the third offense.

(22) Failure of the landscape contractor to notify the Landscape Contractors Board of a change of address or employment in writing on line at the LCB website as required by ORS 671.603 and OAR 808-003-0045, $200.

(23) Failure of a landscaping business to notify the board of a change in address in writing or on line at the LCB website as required by ORS 671.603, $200.

(24) Failure of a landscaping business to require the landscape contractor to directly supervise unlicensed employees of the landscaping business performing landscaping work that is related to the landscape contractors phase of license, $500.

(25) Failure of a landscaping business to maintain the correct amount of surety bond or irrevocable letter of credit, as required by ORS 671.690(1), $1,500 and suspension of the landscaping business license until it obtains and maintains the surety bond or irrevocable letter of credit required by law.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 671.720
Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2005, f. & cert. ef. 4-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06

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Oregon Department of Education
Chapter 581

Adm. Order No.: ODE 12-2005(Temp)
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 12-29-05 thru 6-1-06
Notice Publication Date:
Rules Adopted: 581-024-0195
Subject: The proposed rule directs pilot ESDs, as created by HB 3184 and as set out in Ch. 828, Oregon Laws 2005, to comply with the provisions of the law. The rule is established as a "standard" for ESDs.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, Ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail debby.ryan@state.or.us.

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-024-0195
Pilot ESD

In compliance with ORS 334.125(3), pilot ESDs, as defined in chapter 828 Oregon Laws 2005, must comply with the requirements and timelines for establishment of zones, selection of board members, and governance set out in chapter 828 Oregon Laws 2005.

Stat. Auth.: ORS 334.217
Stats. Implemented: ORS 334.217 & Ch. 828, OL 2005
Hist.: ODE 12-2005(Temp), f. & cert.ef. 12-29-05 thru 6-1-06

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Adm. Order No.: ODE 13-2005(Temp)
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 12-29-05 thru 6-1-06
Notice Publication Date:
Rules Amended: 581-024-0205, 581-024-0206, 581-024-0208, 581-024-0210, 581-024-0285
Subject: The proposed amendments bring OARs into alignment with new statutory requirements regarding ESDs' development of local service plans and reporting.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, Ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail debby.ryan@state.or.us.
Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-024-0205
Definitions

The following definitions apply to OAR 581-024-0205 through 581-024-0310 unless otherwise indicated by context:

(1) "Annual Report" document prepared by the district and filed by October 31 of each year with the Department. The Annual Report includes both a completed "Self-Appraisal Form" and a "Service and Performance Summary" as identified on forms provided by the Department.

(2) "Assessment": activities designed to secure and organize information describing district performance relative to its own instructional and support service goals;

(3) "Board": State Board of Education;

(4) "Component": a school district whose administrative office is within the district;

(5) "Core services": the services set out in ORS 334.125(2)(a)–(e);

(6) "Department": Oregon Department of Education;

(7) "District": an education service district;

(8) "District Board": an education service district board;

(9) "Local Service Plan (LSP)": a plan developed by an ESD board and by component school districts to define the core and other services to be provided by an ESD, which contains annual performance measures, is approved by component school districts and adopted by an ESD;

(10) "Noncomponent": a school district whose administrative office is outside the district;

(11) "Public Entity" is a unit of local, state, or federal government;

(12) "Private entity" is not a unit of local, state. Or federal government and includes, but is not limited to, a not-for-profit or business organization;

(13) "Service": the activities provided by the district in response to statutes, administrative rules, district board directives, resolutions and contracts;

(14) "Service Evaluation": the adopted method, system, or the way by which the effectiveness of service goals is measured;

(15) "Service Goals": statements of desired service outcomes for each district instructional service for the entire system stated in terms of the activities to be implemented;

(16) "Service Improvement": using assessment and needs identification information in making service revisions that reduce needs identified;

(17) "Service Needs Identification": procedures to specify and rank actual and desired outcomes of district services sufficient to warrant considering program revision;

(18) "Standard District": a district having met provisions of division 24 of Board administrative rules;

(19) Nonstandard District": a district not meeting the provisions of division 24 of Board administrative rules; and

(20) "Superintendent": State Superintendent of Public Instruction.

Stat. Auth.: ORS 334
Stats. Implemented: ORS 334.125
Hist.: 1EB 265, f. & ef. 8-22-77; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06

581-024-0206
Powers and Duties

Pursuant to ORS 334.125, the district board is authorized to transact appropriate business and is required to perform certain duties.

(1) Every district shall comply with the statutes and rules governing the transaction of public business to include directives on budgeting and expenditures.

(2) Every district shall comply with Board adopted administrative rules and applicable statutes.

(3) The district board shall perform all duties required by law, including but not limited to those identified in ORS 334.125(3) as follows:

(a) Distribute school funds as it is empowered to apportion. Distribution shall be done in a timely and accurate manner;

(b) Conduct of audits requiring the district to assist components to meet budgeting, accounting and audit requirements (OAR 581-024-0265), to serve as a public depository for just completed audits and maintain past audit reports for 20 years;

(c) Serve as district boundary board as identified in ORS 330.081–330.310 and OAR 581-024-0252;

(d) Prepare an annual operating budget in accordance with the local budget section of Chapter 294 of ORS, the local Budget Law, and the chart of accounts contained in the program Budget and Accounting Manual as adopted by the State Board of Education and levy taxes as required or permitted by law;

(e) Contract bonded indebtedness in the manner authorized by statute. Bonds are to be issued pursuant to ORS 328.205 to 328.295 and other laws applicable to the issuance of bonds; and

(f) Creating a county education bond district under ORS 328.304 from a county within the district; and

(g) Review periodically with components, their operations, and submit to the components plans that would achieve economies and efficiencies through consolidation of various operations of all or some of the components. The district and its components shall submit an annual report to the Board on the effectiveness of the consolidation of operations.

(4) Education service districts must comply with the requirement to develop, adopt and approve a local service plan as set out in chapter 828 Oregon Laws 2005. The ESD board must adopt the local service plan and the component districts must approve the local service plan by resolution prior to March 1 of each year, beginning with a plan approved by March 1, 2006.

Stat. Auth.: ORS 334.125
Stats. Implemented: ORS 334.125
Hist.: EB 16-1994, f. & cert. ef. 11-14-94; ODE 22-2002, f. & cert. ef. 10-15-02; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06

581-024-0208
Mission, Roles and Goals

(1) Each district board shall adopt a statement of goals compatible with the legislated mission and roles of districts.

(2) In accordance with ORS 334.005 the mission and roles of the districts are as follows:

(a) The mission of education service districts is to assist school districts and the Department of Education in achieving Oregon's educational goals by providing equitable, high quality, cost-effective and locally responsive educational services at a regional level.

(b) An education service district plays a key role in:

(A) Ensuring an equitable and excellent education for all children in the state;

(B) Implementing the Oregon Education Act for the 21st Century;

(C) Fostering the attainment of high standards of performance by all students in Oregon's public schools; and

(D) Facilitating inter-organizational coordination and cooperation among educational, social service, health care and employment training agencies.

(c) An education service district's role is one of leadership and service. Education service districts shall maintain the distinction between their role as service organizations and the regulatory role of the Department of Education and other agencies.

(d) To ensure that an education service district is locally responsive, an education service district shall provide:

(A) Opportunities for component school districts to participate in decisions about the services that are offered by the education service district; and

(B) A variety of flexible service delivery models.

(e) An education service district shall remain accountable to:

(A) The public at large;

(B) The component school districts; and

(C) The State Board of Education.

Stat. Auth.: ORS 334.005 & 334.217
Stats. Implemented: ORS 334.125

Hist.: EB 10-1994, f. & cert. ef. 8-16-94; ODE 22-2002, f. & cert. ef. 10-15-02; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06

581-024-0210
Administration of the Standardization Requirements

(1) The State Board of Education by adopting Oregon Administrative Rules establishes standards to determine the adequacy of services and facilities provided by an education service district. In establishing these standards the Board shall consider the most economic method of providing services and facilities, the quality of the services and facilities according to the best educational standards, and the needs of the students.

(2) The standards include rules in division 24 of chapter 581 of Oregon Administrative Rules. The Board requires substantial compliance with applicable statutes and rules.

(3) The evaluation for compliance shall e conducted through the review of an annual report. In addition, an on-site evaluation of the district shall be done at intervals not to exceed five years. The evaluation team named by the Department shall use the annual report, district records, and the on-site evaluations in determining the degree to which these standards are met.

(4) The Department shall use the standards and the district's annual report to identify which standards are to be evaluated and reported on during the on-site visit. The district will be notified of the standards to be evaluated and the dates of the visit at least 90 days prior to the on-site visit. The district shall prepare exhibits that document its activities relative to the identified standards.

(5) Upon request of the State Superintendent, each district shall prepare and forward to the Department an annual report.

(6) The on-site visit will be conducted by a team chaired by Department staff person with additional members from the Department, other education service districts and components. The size of the team shall be determined by the Department in accordance with the standards to be reviewed and the complexity of the programs and services.

(7) The chair of the team shall, within 30 days of the visit, present to the district a draft report of the team's findings. The district's response must be received by the Department not later than 30 days after the district's receipt of the draft report.

Stat. Auth.: ORS 334.217
Stats. Implemented: ORS 334.125
Hist.: 1EB 237, f. & ef. 7-9-76; 1EB 265, f. & ef. 8-22-77; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 16-1994, f. & cert. ef. 11-14-94; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06

581-024-0285
Local Service Plans

(1) The district board must develop and adopt a local service plan as defined in OAR 581-024-0205 pursuant to ORS 334.175.

(2) Following adoption by the district board, the LSP must be approved by component school districts by resolution on or before March 1 pursuant to ORS 334.174(5)(b).

(3) An education service district board shall expend at least 90 percent of all amounts received from the State School Fund and at least 90 percent of all amounts considered to be local revenues of an education service district, as defined in ORS 327.019, on services or programs that have been adopted by board in the LSP and approved by the component school districts of the education service district through the resolution process described in ORS 334.175.

(4) Programs must be specifically approved in the LSP to be considered as part of the required 90%. Mandated services provided for attendance and home school students are not included in the 90% calculation unless they are specifically named in the LSP.

(5) Appropriate indirect costs of personnel, supplies, materials, equipment, and facilities associated with providing resolution services may be allocated to the LSP and included in the 90% calculation. The appropriate amount of indirect costs must be adopted and approved in the LSP.

Stat. Auth.: ORS 334.005 & 334.175
Stats. Implemented: ORS 334.005
Hist.: EB 16-1994, f. & cert. ef. 11-14-94; ODE 22-2002, f. & cert. ef. 10-15-02; ODE 13-2005(Temp), f. & cert. ef. 12-29-05 thru 6-1-06

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Oregon Housing and Community Services
Chapter 813

Rule Caption: Adopts rules to administer the provisions of HB 2199, 2005 Oregon Laws, Oregon Chapter Law 119, for the Vertical Housing Program.
Adm. Order No.: OHCS 1-2006(Temp)
Filed with Sec. of State: 1-5-2006
Certified to be Effective: 1-5-06 thru 7-4-06
Notice Publication Date:
Rules Adopted: 813-013-0001, 813-013-0005, 813-013-0010, 813-013-0015, 813-013-0020, 813-013-0025, 813-013-0030, 813-013-0035, 813-013-0040, 813-013-0045, 813-013-0050, 813-013-0055, 813-013-0060
Subject: The rules will carry out the provisions of HB 2199, 2005 Oregon Laws, Oregon Chapter Law 119, as they pertain to the administration of the Vertical Housing Program. The program encourages construction or rehabilitation of properties in targeted areas of communities in order to augment the availability of appropriate housing and to revitalize such communities. Division 813-013 sets forth relevant aspects of the Program, including processes and criteria for the designation of Vertical Housing Development Zones (VHDZ) for the application and approval of Certified Projects, for the calculation of any applicable property tax exemptions, and for the monitoring and maintenance of properties as qualifying Certified Projects. Division 013 is not meant to interfere with the direct administration of property tax assessments by county assessors and does not supersede administration rules of the Department of Revenue in OAR Chapter 150 pertaining to the valuation of property for purposes of property tax assessments as adopted or amended in the future for such purposes.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-013-0001
Purpose and Objectives

(1) OAR chapter 813, division 013 is promulgated to carry out the provisions of HB 2199, 2005 Oregon Laws, Oregon Chapter Law 119, as they pertain to the administration by the Housing and Community Services Department (Department). The purpose of the (Program) is to encourage construction or rehabilitation of properties in targeted areas of communities in order to augment the availability of appropriate housing and to revitalize such communities. Division 013 sets forth relevant aspects of the Program, including processes and criteria for the designation of Vertical Housing Development Zones (VHDZs), for the application and approval of Certified Projects, for the calculation of any applicable property tax exemptions, and for the monitoring and maintenance of properties as qualifying Certified Projects.

(2) Division 013 is not meant to interfere with the direct administration of property tax assessments by county assessors and does not supersede administrative rules of the Department of Revenue in OAR chapter 150 pertaining to the valuation of property for purposes of property tax assessments as adopted or amended in the future for such purposes.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0005
Definitions

As used in this division 013, unless the context indicates otherwise:

(1) "Applicant" means one or more cities or counties or a combination thereof, or their authorized agent(s) that seek the designation of a VHDZ within an area of its jurisdiction.

(2) "Certified Project" means a multi-story development within a VHDZ that the Department certifies as a Vertical Housing Development Project ("Project") qualifying for a vertical housing property tax exemption based on a proposal and description from a Project Applicant that conforms to Department requirements. Certified Projects approved by the Economic and Community Development Department of the State of Oregon ("OECDD") prior to November 4, 2005 will continue as Certified Projects upon assumption of administration of the Vertical Housing Program by the Department on November 4, 2005. These OECDD Certified Projects will continue to maintain their accompanying property tax exemptions throughout their original terms unless all or part of such Certified Projects are subsequently modified or decertified by the Department. These OECDD Certified Projects are subject to the ongoing reporting and other requirements of this division 013.

(3) "Construction" means the development of land, and the construction of improvements to land as further described in this division 013.

(4) "Core Area of an Urban Center" means the central business downtown area of a community of any size. While VHDZs need not include a "core area of an urban center," an application to establish a VHDZ should identify whether the proposed VHDZ includes a Core Area of an Urban Center and describe the areas so included.

(5) "Department" means the Housing and Community Services Department of the State of Oregon.

(6) "Director" means the Director of the Housing and Community Services Department or someone within the Department authorized to act for the Director for purposes of the Vertical Housing Program.

(7) "Equalized Floor" means the quotient that results from the division of total square footage of a project (as determined by the Department) by the number of actual floors of the project that are at least 500 square feet per floor unless the Department, in its discretion, increases the maximum square footage or otherwise qualifies the actual floors of a project eligible to be used as a divisor in determining the equalized floor quotient. Factors that the Department may consider in determining whether or not to increase the square footage minimum or to impose other conditions upon a qualifying divisor floor include, but are not limited, to the following:

(a) The proximity of the actual floor under consideration to other floors in the project;

(b) The extent of construction or rehabilitation on the actual floor under consideration;

(c) The use intended for the actual floor under consideration;

(d) The availability of the actual floor under consideration for use by prospective project tenants; and

(e) No property tax exemption will be awarded for a partial equalized floor of residential housing. Accordingly, the Department will determine the number of residential equalized floors in a project available for calculating a corresponding property tax exemption by rounding down to the next complete equalized floor of residential housing. In other words, a Certified Project will contain exactly 1, 2, 3, or 4 residential equalized residential floors.

(f) Patios, deck space, and parking normally will not be included by the Department in the determination of equalized floors. The Department may include any or all of such space in its determination of equalized floors if it concludes that they are critical for the viability of the project. Factors that the Department may consider in reaching such a conclusion include, but are not limited to the following:

(A)The effect of such spaces upon the economic viability of the project;

(B)The degree to which such spaces are integral to the habitability of residential housing in the project;

(g) The benefit of such spaces with respect to the revitalization of the community in which the project is located; and

(h)The degree to which inclusion of such spaces modifies the calculation of equalized floors.

(8) "Light Rail Station Area means an area defined in regional or local transportation plans to be within one-half mile radius of an existing or planned light rail station. While VHDZs need not necessarily include a Light Rail Station Area, an Applicant must identify in a VHDZ application what part of the VHDZ, if any, will include a Light Rail Station Area. The inclusion of this information in the VHDZ application will assist the Department in determining the merits of the proposed VHDZ and its potential relationship to established public transportation.

(9) "Low Income Residential Housing" means housing that is restricted to occupancy by persons or families whose initial income at occupancy or initial certification of the project is no greater than 80 percent of area median income, adjusted for family size, as determined by the Department. Owners must provide evidence satisfactory to the Department of such resident eligibility as required by the Department.

(10) "Non-Residential Areas" means square footage within a Certified Project used other than primarily for residential use or as common areas available primarily for use by residents of the private residential housing within a Certified Project.

(11) "Project Applicant" means an owner of a property within a VHDZ, or its authorized agent that applies in a manner consistent with this Division, to have any or all such property approved by the Department as a Certified Project.

(12) "Rehabilitation" means the substantial repair or replacement of improvements (including fixtures) or land developments. In determining whether or not proposed or completed rehabilitation is satisfactory or substantial, the Department may consider factors including, but not limited to:

(a) The quality and adequacy of design, materials and workmanship;

(b) The quantity of rehabilitation in proportion to the total cost of the project and between residential and nonresidential areas;

(c) The distribution of rehabilitation throughout the project, including as it relates to the habitability of residential areas, and particularly low-income residential housing areas.

(d) For the Department to consider a rehabilitation project as "substantial rehabilitation," generally, the value of the improvements on the project must meet or exceed 20% of the assessed real market value of the entire project before the improvements unless the Department, in consideration of other factors, will deem the proposed rehabilitation to be "substantial."

(13) "Residential Use" means regular, sustained occupancy of a residential improvement by a person or family as the person's or family's primary domicile, including areas used primarily for transitional housing purposes, but not areas used primarily as:

(a) Hotels, motels, hostels, rooming houses, bed & breakfast operations or other such temporary or transient accommodations; or

(b) Nursing homes, hospital-type in-patient facilities or other living arrangements, even of an enduring nature, where the character of the environment is predominately care-oriented rather than solely residential.

(14) "Special District" means a Local Taxing District that is also of a type listed under ORS 198.010 or 198.180.

(15) "Transit Oriented Area" means an area defined in regional or local transportation plans to be within one quarter-mile of a fixed route transit service. While VHDZs need not include a Transit Oriented Area, an Applicant must describe what parts of the proposed VHDZ, if any, includes a Transit Oriented Area. The inclusion of this information in the VHDZ application will assist the Department in determining the merits of the proposed VHDZ and its potential relationship to established transit systems within the relevant community.

(16) "Vertical Housing Development Project" or "Project" means the construction or rehabilitation of a multiple-story building, or a group of buildings, including at least one multiple-story building, so that a portion of the Project is to be used for nonresidential uses and a portion of the Project is to be used for residential uses.

(17) "Vertical Housing Development Zone" or "VHDZ" or "Zone" means an area that has been designated by the Department as a Vertical Housing Development Zone or a Vertical Housing Development Zone that was officially designated by the Oregon Economic and Community Development Department (OECDD) prior to November 4, 2005.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0010
Special Districts and Zone Applications

(1) To elect not to participate in a VHDZ, a Special District shall, within 45 days after the date on which proper written notification is mailed by the Applicant to the Special District advising of the application to form a VHDZ:

(a) Inform the Applicant in writing of its decision to opt out of the VHDZ designation; and

(b) Furnish to the Applicant a copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the Special District affirming its decision to opt out of the VHDZ designation.

(2)(a) Not later than 30 days after filing the application with the Department, the Applicant must submit to the Department, a final statement, satisfactory to the Department identifying the Special Districts (if any) that have opted out of the VHDZ designation.

(b) If applicable, the statement required in paragraph (2)(a) shall specifically list each Special District opting out of the VHDZ designation, together with a copy of the instrument(s) provided to the Applicant by each such Special District.

(c) Simultaneously with the submission of the statement in paragraph (2)(a), the Applicant also shall send a copy of each statement by a Special District opting out of a VHDZ designation to the Special Districts Association of Oregon ("SDAO"), in Salem (Attn: 'Vertical Housing Development Zone') and to other affected Special Districts within the proposed VHDZ that are not part of SDAO.

(3) A Special District that fails to respond according to subsection (1) of this section will be subject to the VHDZ designation and excluded from being listed as described in subsection (2) of this section. A Special District that initially is subject to a VHDZ designation may subsequently opt out through the procedures described in subsection (1) of this section.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0015
Content and Processing of Zone Applications

(1) An Applicant may apply to the Department for the designation of a VHDZ when permitted by the Department as long as the Applicant has provided notification of such intended action to Special Districts within the proposed VHDZ in form satisfactory to the Department not less than 15 calendar days prior to filing the application.

(2) The application must be made in such form and with such detail and information as the Department may require from time to time. The Department may require an Applicant to provide supplemental information to and clarification of its application, as the Department deems appropriate.

(3) Applications must be delivered to the Department at the following address: Oregon Housing and Community Services, Vertical Housing

Program, Housing Division, 725 Summer Street NE, Suite B, PO Box 14508, Salem, Oregon 97309-0409.

(4) An application, at a minimum, must contain:

(a) Copies of the resolutions adopted by the governing body of each city and/or county comprising the Applicant and requesting (or as applicable, consenting to) designation of the proposed VHDZ;

(b) A listing of all Special Districts within the proposed VHDZ, a copy of the written notification mailed to them, and a signed certification of mailing by the Applicant to the Special in accordance with subsection (1) of this section;

(c) A description of the area sought by the Applicant to be designated as the VHDZ, including but not limited to a scale map clearly showing the proposed VHDZ boundary and a complete list of property tax accounts to be encompassed by the VHDZ. A designated VHDZ may include separate, noncontiguous property areas. VHDZ boundaries also may be designated vertically to limit the height and/or the number of floors of structures that may qualify as part of a Certified Project within various parts of the VHDZ; and

(d) Documentation satisfactory to the Department establishing that the area proposed for VHDZ designation is inside the jurisdiction of the Applicant.

(5) The Department will act reasonably to review applications submitted by an Applicant.

(6) The Department may conduct its own investigation, including the procurement and review of materials and information outside of the application, to assist it in its review or reconsideration of an application.

(7) The Director will endeavor to approve or deny applications within 60 days of the Department's receipt of a complete application, the receipt of such other information or clarification as it may require of the Applicant, and the completion of any Department investigation. The Department will not approve any application before receiving statements required under subsection (4) of this section. The Department may decline further consideration of or deny any application if it determines that the Applicant has been untimely or unresponsive with respect to providing required or requested information.

(8) If an application is denied in whole or in part, the Department will send a written explanation to the Applicant of such determination.

(9) The Department may approve or deny any application, in whole or in part, based upon factors including but not limited to:

(a) Applicant's compliance with the requirements of this division 013;

(b) The proposed VHDZ's location in or outside of the jurisdiction of the Applicant;

(c) The accuracy and completeness of the application and any other information requested by the Department from the Applicant;

(d) Conformance by the Applicant and the proposed VHDZ with applicable law;

(e) The Department's determination of the suitability of the proposed VHDZ, or parts thereof, for accomplishing the purposes of the Program and these rules.

(f) A Department determination to approve or deny any or all of a VHDZ's application is final and not subject to further administrative or judicial review. The Department may reconsider such determinations at any time and to the degree that it determines to be appropriate.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0020
Zone Designations

(1) The Department will send a copy of any designation of a VHDZ to the Applicant, the Department of Revenue and to any affected county assessor(s) office. The Department will include with the notification to the assessor:

(a) Copies of materials delineating the area of the VHDZ; and

(b) The name of any Special District that opted out of the VHDZ.

(2) Once designated, a VHDZ shall continue to exist indefinitely, except as provided otherwise in this division 013.

(3) The boundary of a VHDZ may be modified. To modify a VHDZ, the Applicant must apply for such modification to the Department in accordance with the same procedures established herein for the approval of a VHDZ. A Certified Project will continue to have its associated tax exemptions throughout the initial designated term of those exemptions, regardless of any subsequent modification of the VHDZ.

(4) Applicant may seek to have the Department approve multiple VHDZs within their jurisdictions.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0025
Municipally Sponsored Development Projects

(1) Oregon Laws, Chapter 119 authorizes cities and counties to acquire or dispose of real property located in a VHDZ for the purpose of developing Projects. Property acquired by a city or county within a VHDZ may be sold by the city or county at real market value or, if it will prudently encourage the development of a Project, at a lesser value. This authority is in addition and without prejudice to any authority by a city or county to acquire or dispose of property that otherwise exists under the laws of this state.

(2)(a) Development of Projects may be undertaken by a city or county independently, jointly or in partnership with a private entity.

(b) Development of Projects also may be undertaken by private entities acting independently of city or county ownership.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0030
Zone Termination or Modification

(1) An Applicant that initiated the designation of a VHDZ may request that the Department terminate all or part of the VHDZ provided that:

(a) All Applicant members evidence that the VHDZ should be terminated.

(b) The Applicant furnishes to the Department a certified copy of a resolution from the governing body of each Applicant member, adopted not more than 60-days prior to the termination request, that approves its Applicant member's request to terminate the VHDZ; and

(c) The request otherwise contains such information and is in such form as the Department may require.

(2) The Department may waive the requirement for approval by all Applicant members if the requested termination is partial in nature and applies only to areas exclusively within the jurisdiction of those Applicant members seeking the partial termination.

(3) In issuing a VHDZ termination determination, the Department may make the termination effective at any time within 90 days from receiving a conforming request, taking into account factors including, but not limited to pending applications for project certification.

(4) The Department may approve a Certified Project between the time of a request for VHDZ termination and its termination if the application for certification of the Project was pending with the Department prior to the Department's receipt of a request for VHDZ termination. However, the Department may consider the request for VHDZ termination in determining whether or not to approve the application for a Certified Project.

(5) The Department will send notice of its termination of a VHDZ to the VHDZ Applicant, the Department of Revenue, affected county assessors, and owners of Certified Projects, of whom the Department is aware.

(6) Subsequent VHDZs may include area from a terminated VHDZ. A new VHDZ may be designated, or an existing VHDZ expanded or reduced, so that there is no discontinuance of a VHDZ designation for any areas where the VHDZ designation is intended to endure.

(7) Applicants seeking to expand a VHDZ shall follow the procedures identified in this division 013 for seeking approval of a VHDZ designation from the Department.

(8) The Department may terminate all or part of a VHDZ on its own initiative, or at the request of any person, if the Department determines that the VHDZ fails to satisfy the criteria under this division 013 for the establishment of a VHDZ. Any such termination determination will not affect existing Certified Projects and is not subject to administrative or judicial review. The Department may reconsider any such determination.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0035
Project Certification Applications

(1) If the Department is receiving applications a Project Applicant may file an application for certification of a Project by completing the Vertical Housing Project application form, as prescribed from time to time by and available from the Department, and by delivering it during normal business hours or by mail to: Oregon Housing and Community Services, Vertical Housing, Housing Division, 725 Summer Street NE, Suite B, PO Box 14508, Salem, Oregon 97309-0409.

(2) Among other things, Projects must be described in terms of applicable entire tax lots. Projects may not include partial tax lots.

(3) To be for 'Residential Use' or for 'Non-Residential Use' does not mean that a building floor is actually being occupied accordingly, but rather that it is at least intended and ready for such use and is not converted or occupied for a contrary use.

(4) 'Low-income' housing floors or units must be set-aside as such for the entire tax year and occupied only by people who are income eligible to qualify for the 'low income' vertical housing exemptions on land.

(5) The Non-Residential Use for a particular floor or floors may be satisfied even if the entire floor is not devoted to that use.

(6) If the Department is receiving applications, it will review applications upon their appropriate delivery subject to, but not limited to:

(a) Applications being complete and consistent with Department requirements; and

(b) Delivery to the Department of an application processing charge and monitoring charge. The amount of the charges will be determined for each Project Applicant and based on a reasonable level to cover the Department's relevant costs in administering the Vertical Housing Program. Payment will be made by check or money order payable to the Department and will be submitted along with the project application.

(7) For new construction Projects to qualify for certification, the application must be delivered to the Department before:

(a) The relevant permitting authority has issued a temporary or permanent certificate of occupancy; or

(b) If no certificate of occupancy is required, then occupancy otherwise is effectively prevented because the proposed Certified Project has not yet been completed.

(8) For rehabilitation Projects to qualify for certification, the application must be delivered to the Department at any stage of the rehabilitation, but not after rehabilitation work on the Project is complete. The Department may provide a preliminary certification of the Project pending completion of the rehabilitation of the Project. Upon completion of the rehabilitation, notification of the Project's completion, together with appropriate documentation of the actual costs of the rehabilitation and the assessed real market value of the pre-rehabilitated Project must be forwarded by the Project Applicant to the Department within 90 days of Project completion. The Department may certify all or part of a rehabilitated property improvement, or of a property improvement rehabilitation still in progress as a Certified Project.

(9) Application requirements may include, but are not limited to:

(a) Address and boundaries of proposed Project including the tax lot numbers;

(b) Description of existing condition of property;

(c) Description of proposed Project including, but not limited to, design (current architectural plans) that include verifiable square footage, construction/rehabilitation costs; and number of floors.

(d) Description of non-residential uses and total non-residential square footages;

(e) Description of residential uses and total square footage;

(f) Description of number and nature of low-income residential units and total low-income residential square footage;

(g) Confirmation that the Project is entirely located in an established VHDZ;

(h) Commitment (documentation) the Project will be maintained and operated in same manner consistent with the Project application certified by the Department for the term of the exemption;

(i) Calculation of equalized floors and common areas including allocation of equalized floors to residential uses, allocation of equalized floors to low-income residential uses, non-residential areas, and floors must be at least 500 square feet or greater to be included.

(j) The Project application must be submitted on or before the new construction residential units are ready for occupancy or rehabilitation is complete.

(k) The Department may request further documentation or undertake any investigation deemed necessary to verify application information.

(l) In the case of rehabilitation of any existing improvement, the described work will substantially alter or enhance the utility condition, design or nature of the structure, such that the following alone is not sufficient for this purpose, irrespective of cost or implementation throughout a building:

(A) Maintenance and repairs;

(B) Refurbishment or redecoration that merely replaces, updates or restores certain fixtures, surfaces or components;

(C) Similar such work of a superficial, obligatory or routine nature; or

(D) The Project work has been completed.

(10) Unless an exception is granted by the Department, Projects "in progress" at the time of application may include only costs incurred within 6 months of the application date. Factors that the Department may consider in determining whether or not to grant an exception to the 6-month limitation on costs include, but are not limited to the following:

(a) Delay due to terrorism or acts of God;

(b) Delay occasioned by requirements of the Department;

(c) Resultant undue hardship to the Project Applicant;

(d) The complexity of the Project; and

(e) The benefit of the Project to the Community.

(11) For applications filed before Project completion, the Department may provide a conditional letter of prospective certification of the Project pending its completion. To obtain a final certification of the Project, the Project Applicant must provide notification to the Department of the Project's completion, along with associated documentation as the Department may require. A Project Applicant must provide the required documentation to the Department within 90 days of Project completion (certificate of occupancy).

(12) If an application is rejected for failure to meet Department review requirements, then:

(a) The Department will notify the Project Applicant that the application has been rejected.

(b) The Department, at its own discretion, may allow the resubmission of a rejected application for Project certification ("as is" or with appropriate corrections or supplementations) or may reconsider a determination by it to reject an application. Factors that the Department may consider in allowing a resubmission of a rejected application, or the reconsideration of a determination by it to reject an application include, but are not limited to the following:

(A) Whether or not rejection results in undue hardship to the Project Applicant;

(B) The best interests of the Community;

(C) The level of cooperation from the Project Applicant;

(D) The level and materiality of initial noncompliance by the Project Applicant; and

(E) Mitigation of any initial noncompliance by the Project Applicant.

(c) If the Department accepts for review a previously rejected application, it may do so, at its sole discretion, on a prospective basis or based upon the original date of filing. Factors that the Department may consider in determining the date to apply to a previously rejected, but now accepted, application include, but are not limited to the following:

(A) Whether or not occupancy or readiness to occupy residential units in the Project has occurred since the original application;

(B) Whether or not undue hardship would result to the Project Applicant;

(C) The best interests of the Community; and

(D) The level and materiality of noncompliance in the initial application.

(13) The Department will evaluate each accepted application to determine whether or not to certify the Project proposal.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0040
Project Criteria

A Project, to qualify for Department certification, must satisfy each of the following criteria:

(1) The Project must be entirely located within an approved VHDZ;

(2) The Project must be comprised of a multiple-story building, or a group of buildings, including at least one multiple-story building, so that a portion of the Project is to be used for nonresidential uses and a portion of the Project is to be used for residential uses;

(3) Construction or rehabilitation will be or has been undertaken with respect to each building or associated structure included in the Project, including but not limited to, additions that expand or enlarge an existing building;

(4) The Project application is 'complete' as determined by the Department;

(5) The Project application received by the Department on or before the nonresidential units are ready for occupancy (certificate of occupancy). For substantial rehabilitation, not involving tenant displacement, the Project application must be filed before the rehabilitation work is complete;

(6) Calculation of equal floors is adequately documented;

(7) Documentation satisfactory to the Department establishes the costs of construction or rehabilitation of Project land developments and improvements, as applicable;

(8) The Project does not include parking, patio, or porch areas unless these elements can be demonstrated by Project Applicant to the satisfaction of the Department that they are economically necessary to the Project and the Department otherwise determines that it is appropriate to grant an exception for the inclusion of any or all of such areas in the Project;

(9) Certified Projects with at least one equalized floor of low-income housing will be entitled to a partial property tax exemption on the tax lot for the land upon which the vertical housing development stands, but not the land adjacent to or surrounding the vertical housing development; and

(10) Affordable (low-income) housing floors on a vertical housing project must continue to meet the income eligibility requirements for the definition of low-income housing given in OAR 813-013-0005(8) for the entire period for which the vertical housing project is certified.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0045
Department Certification of Projects

(1) The Department will endeavor to process each accepted application and make a determination whether or not to approve such application, in whole or in part, within 60 days of when the accepted application is received by the Department at its Salem Office.

(2) If the application is approved, the Department will:

(a) Issue a letter to the Project Applicant with an explanation of the partial exemption on the Certified Project's property;

(b) Send a copy of the Project information to the county assessor of the county in which the Certified Project is located.

(c) The Department will provide a document for the owner to record in the Project's county of record. The document will be recorded against the land as a project use agreement and restricted convenant to remain as an exception on the property title for the term of the exemption. The owner shall be responsible for the cost of recording and providing satisfactory evidence to the Department that the document has been properly recorded.

(3) If the application is denied, the Department will: Send written notice to the Project Applicant of the denial; and at its option, may allow reapplication consistent with 0035(3)(b) of this rule.

(4) Certification of a proposed multi-structure project may be partially approved, such that the Department's letter of approval circumscribes the Certified Project to exclude certain areas of land and/or one or more improvements.

(5) The letter of approval from the Department also may discuss the equalized floors of residential and affordable housing applicable to the project.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0050
Project Monitoring/Decertification

(1) A one-time monitoring charge of up to $150 paid by the Project Applicant to the Department at the time of Project application to cover the Department's cost of monitoring compliance with these Administrative Rules and the provisions of 285C.450 to 285C.480. Factors the Department will consider in determining the charge for a Project Applicant may include, but are not limited to:

(a) The size of the Project;

(b) The number of units; and

(c) The number of separate sites and/or buildings.

(2) If the project has low income units, a monitoring charge of up $200 paid by the Project Applicant to the Department at the time of Project application to cover the costs of monitoring compliance with these Administrative Rules and the provisions of 258C.450 to 258C.480.

(3) If there are modifications to or transfers of ownership of the Certified Project, the project owner or their designated representative shall notify both the county assessor and the Department of the new owner's name, contact person, mailing address and phone number within 30 days of the change.

(4) An additional investigation charge will be assessed according to the Department's estimate of time involved with reviewing complaints, discrepancies, inconsistencies, or other problems discovered through the monitoring or certification process. Investigation fees will be charged according to the time involved and will be billed at $50 per staff-hour spent on the investigation.

(5) If the Department should find the Project is no longer conforming with the original Certified Project agreement (as provided in the Project Applicant's final application and Certification), the Department shall notify the owner of non-compliance and provide an opportunity to correct within a reasonable amount of time.

(6) If the Department determines the Certified Project is no longer in compliance, the owner has been notified and given an opportunity to correct, the Department shall decertify the Project for the remaining term of the partial exemption period and notify the county assessor.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0055
Partial Property Tax Exemptions for Certified Projects

(1) In order to grant an exemption, the county assessor must be in receipt of relevant certification from the Department, as described in OAR 813-013-0020.

(2) Except as modified by sections (3) and (4) of this rule, the exemption applies to the construction or rehabilitation of real property improvements associated with the Certified Project or the inclusion of affordable housing on the Certified Project, in each of the tax years for which the exemption is available, including but not limited to land development.

(3) The property exemption rate equals 20 percent (0.2) multiplied by the number of rounded equalized floors (among all associated buildings exempt in that year), up to but not exceeding four such equalized floors, that are:

(a) For Residential Use; and

(b) Constructed or rehabilitated as part of the Vertical Housing Development Project. For purposes of calculating the partial property exemption, the equalized floor quotient is rounded down to the next whole number, not to exceed four, to determine the number of rounded equalized floors.

(4) The exemption on a particular building or associated structure is available for ten consecutive tax years beginning with the tax year immediately following the calendar year during which the building's Residential Use areas are first occupied, reoccupied or at the time of certification.

(5) If during the period of partial tax exemption, any part of a floor for Residential Use is converted to or used and occupied for Nonresidential Use, the county assessor and the Department shall be notified by the Project Applicant and the assessor shall terminate the exemption containing the floor for the remainder of the period. Similarly, the county assessor and the Department shall be notified in writing if there are any conversions or changes in occupancy status on any low-income housing portions of the project.

(6) In order to receive the partial property tax exemption, the Vertical Housing Development Project owner, Project Applicant or other person responsible for the payment of property taxes shall notify the county assessor of the county in which the project exists, that the project is a certified Project. The notification must be given to the assessor in writing on or before April 1 preceding the first tax year for which the partial property tax exemption is sought. If all or a portion of a project has been decertified by the Housing and Community Services Department, the property shall be disqualified from exemption under this section in proportion to the equivalent of each equalized floor that has ceased qualifying as residential housing, as set forth in the notice of decertification.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

813-013-0060
Waiver

The Department may waive or modify any requirements of OAR 813, division 013, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.555, HB 2199, 2005 OL, Ch. 119
Stats. Implemented: HB 2199, 2005 OL, Ch. 119
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06

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Oregon Liquor Control Commission
Chapter 845

Adm. Order No.: OLCC 10-2005
Filed with Sec. of State: 12-19-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 10-1-05
Rules Amended: 845-004-0020
Subject: This rule describes fees the agency charges for various services, including records searches and copying of documents. The 2005 legislature passed House Bill 2545, which limits the types of records and review for which the agency may charge a fee, and limits search and copying fees to $25 unless the agency first provides the requestor with written notification of the estimated amount of the fee, and the requestor confirms that they want to proceed. We have amended the rule to bring language in line with statutory changes which are effective January 1, 2006.
Rules Coordinator: Katie Hilton—(503) 872-5004

845-004-0020
Fees for Certain Services

(1) Purpose. In order to recover some of the costs involved, the Commission charges fees for certain services furnished to the public, license applicants and the industry.

(2) The Commission charges the following fees for lists of license or compliance actions:

(a) Weekly applications received list — $5 for individual week, $100 for annual subscription.

(b) Monthly Compliance Action Ratification list — $10 for individual month, $100 for annual subscription.

(c) Monthly staff and commission action list (licensing and permit actions) — $10 for individual month, $100 for annual subscription.

(d) Combination of lists (a), (b), and (c) above — $200 for annual subscription.

(e) Combination of any two lists in (a), (b), or (c) above — $150 for annual subscription.

(f) Any other monthly or weekly lists produced by the Commission Regulatory Program but not included in (a) – (c) above — $5 plus 25 cents per page copying.

(3) The Commission charges the following per record fees for individualized lists of licensed premises by type and location. The Commission may, at its discretion, waive a fee in special instances. Records can be requested as either paper, labels, or diskettes:

(a) 0–999 Records — $25;

(b) 1,000–2,999 — $40;

(c) 3,000–4,999 — $55;

(d) 5,000–6,999 — $70;

(e) 7,000–8,999 — $85;

(f) 9,000 and up Records — $100.

(g) The following lists are available:

(A) Complete list of all licensees;

(B) List of licensees by license type;

(C) List of licensees by county or city; and

(D) List of licensees by license type and county or city.

(h) The Commission may make other lists available if the Commission, in its discretion, determines that the list fills a public need, can be produced using current computer programs, and warrants the dedication of staff time necessary to produce the list. The Commission may provide electronic copies of its records. The fee is the cost of the time and material needed to produce the copy.

(4) The Commission may provide electronic or paper copies of its license and compliance records for licensed businesses. The Commission will only provide copies of documents that are not exempt from public disclosure, and may redact social security numbers and other protected information from copies of documents in the file record before making them available for review. The Commission may make microfiche copies of records available to a licensee or a licensee's legal representative, if the licensee or their representative is requesting a copy of the records for a business that the licensee owns or operates. Requests for Commission license and compliance records must be received in writing, on forms prescribed by the Commission. Except as described in sections (10) and (11) of this rule, the Commission charges the following fees for locating, researching, assembling, organizing, reviewing, redacting confidential information, copying, collating, and making records available for public viewing:

(a) File review of paper copies or microfiche files, up to 100 pages: $5.00, plus 25 cents per page. The Commission may require payment of the full amount of fees at the time the request is received.

(b) File review of paper copies of individual files larger than 100 pages: $13.00 for each hour of staff time to locate, research, assemble, organize, review, redact confidential or protected information, copy, and collate the file records, plus 25 cents per page. The Commission may require payment of the full amount of the photocopying fees at the time the request is received.

(c) File review of records available in an electronic format: $5.00, plus the cost of the storage media.

(5) The Commission will provide copies of tapes of its hearings, monthly Commission meetings and other taped proceedings for a $5 per tape fee. The Commission does not provide transcription service.

(6) Representatives of distilled spirits' suppliers may purchase monthly reports of sales and inventory by code number (brand) by retail outlet. The fee is $20 for preparation of the report, plus $2 for each code included in the report. The Commission will bill representatives monthly, with payment due within 30 days.

(7) The Commission will charge the supplier or carrier, according to the responsibility for damage, a fee for recouping merchandise. The Commission sets this fee based on an annual review of the Commission's labor and materials cost.

(8) The Commission's charge on special accounts that do not pay normal markup on liquor purchases is the landed cost plus a 5% handling fee per case. The handling fee for split cases will be 15% of the landed cost of each bottle ordered.

(9) Except as described in sections (10) and (11) of this rule, the Commission charges the following fees for photocopying records not specified elsewhere in this rule: $13 for each hour of staff time to locate, research, assemble, organize, copy or collate the records, plus 25 cents per page. The Commission may require payment of the amount of the photocopying fees at the time the request is received.

(10) The Commission may not include in a fee charged under sections (4) or (9) of this rule the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.410 to 192.505.

(11) If a fee charged under sections (4) or (9) of this rule is estimated to be greater than $25, the Commission must provide the requestor with a written notification of the estimated amount of the fee. The Commission shall not process the public records request until it receives confirmation from the requestor that the requestor wants the Commission to proceed with making the public record available.

(12) The Commission may furnish copies without charge or at a substantially reduced fee if the Commission determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 192.440(3)
Hist.: LCC 11-1980, f. 3-3-80, ef. 4-1-80; Renumbered from 845-0010-355; LCC 30-1980, f. 12-22-80, ef. 1-1-81; LCC 30-1986, f. 11-20-86, ef. 1-1-87; OLCC 3-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 16-1991, f. 10-31-91, cert. ef. 1-1-91; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 5-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 10-2005, f. 12-19-05, cert. ef. 1-1-06

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Adm. Order No.: OLCC 11-2005
Filed with Sec. of State: 12-19-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 9-1-05
Rules Amended: 845-010-0151
Subject: This rule describes processes by which a wholesaler may claim deduction for privilege tax paid on defective malt beverages or wine after the wholesaler has destroyed the defective product. Staff proposed a change to the rule, as we no longer require notification of destruction within 24 hours. While we have removed language requiring 24 hours of notification, we will insert new language into the rule which gives the Commission to option of requiring such notice.
Rules Coordinator: Katie Hilton—(503) 872-5004

845-010-0151
Deduction of Privilege Tax After Destruction of Defective Product

(1) A wholesaler may claim a deduction for the privilege tax paid on defective malt beverage or wine after the wholesaler has destroyed the defective product. To claim the deduction, the wholesaler:

(a) Destroys the defective product as indicated;

(b) Sends a Bad Order Claim (Form 434) and an Affidavit of Destruction to the Commission;

(c) Receives the Commission's written approval of the claim;

(d) Completes Schedule V — Authorized Deductions; and

(e) Sends the completed form and the Bad Order Claim approval letter to the Commission with the monthly privilege tax report.

(2) The Commission may require at least 24 hours notification before the wholesaler destroys the product of the date, time and place of the planned destruction.

(3) When the wholesaler has given the retailer a credit for more than one case of product, as OAR 845-013-0020(1) allows, the wholesaler, in addition to the procedure in section (1) of this rule:

(a) Gets the retailer's signature on the Bad Order Claim before sending it to the Commission for approval; and

(b) Includes a copy of the Commission's approval of the credit with Schedule V.

(4) When the wholesaler has given the retailer a credit for one case of product or less, as OAR 845-013-0020(1) allows, in addition to the procedure in section (1) of this rule, the wholesaler includes a copy of the wholesaler's credit memorandum with Schedule V.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 473.050(4) & 473.060

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 21-1980, f. 6-20-80, ef. 7-1-80; Renumbered from 845-010-0150; OLCC 3-1987, f. 2-9-87, ef. 4-1-87; Renumbered from 845-006-0075; OLCC 13-1991, f. 9-9-91, cert. ef. 10-1-91; OLCC 11-2005, f. 12-19-05, cert. ef. 1-1-06

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Adm. Order No.: OLCC 12-2005
Filed with Sec. of State: 12-19-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 9-1-05
Rules Amended: 845-010-0170
Subject: This rule describes the sorts of records the Commission requires manufacturers, wholesalers and importers to maintain. A recent statutory change (Senate Bill 840, effective January 1, 2006) means that some types of reporting no longer need to be done on a monthly basis. We have amended language in section (5) of the rule to reflect the change in statute and our processes.
Rules Coordinator: Katie Hilton—(503) 872-5004

845-010-0170
Maintaining Records: Manufacturers, Wholesalers, Importers

(1) The Commission requires every manufacturer, wholesaler, or importer of wine or malt beverages, including wineries and brewery public houses, to keep certain records so the Commission can assure appropriate privilege tax payment and compliance with financial assistance laws.

(2) A manufacturer, wholesaler or importer must keep a record of:

(a) Wine and malt beverage purchases, including:

(A) Sources of purchases and dates received in units by brand and container size;

(B) A classification of dollar amounts as cash or credit;

(C) A record of subsequent account payments; and

(D) An indication of whether the percent of alcohol by volume is under or over 14 percent on wine.

(b) Sales and deliveries to any licensee within Oregon, including:

(A) Daily sales and deliveries in units by brand and container size;

(B) Classification of dollar amounts as cash or credit;

(C) A record of subsequent account collections;

(D) Supporting sales invoices filed by days and bearing the purchaser's true name;

(E) An indication of whether the percent of alcohol by volume is under or over 14 percent on wine; and

(F) Any rebate, discount or allowance for empty container returns.

(3) In addition to the requirements in section (1) of this rule:

(a) A manufacturer, winery or brewery public house must keep a record of the amount of wine or malt beverages produced;

(b) A winery must keep a daily record of retail sales including the total dollar amount of each day's sales and the quantity of each sale by variety; and

(c) A wholesaler must record the purchaser's name, address and telephone number on the invoice of any dock sale that ORS 471.235 allows.

(4) A manufacturer, wholesaler or importer must:

(a) Complete a physical inventory by brand and size of container following the close of business on the last day of February, June and October; and

(b) Adjust the book inventories to agree with the physical inventory for each of these months with satisfactory explanations of differences.

(5) The manufacturer, wholesaler or importer must send the Commission reports that summarize the information in sections (2), (3) and (4) of this rule in a form and within a timeframe prescribed by the Commission.

(6) Every wholesaler, manufacturer or importer of wine or malt beverages must maintain records of all salaries, wages, expenses, allowances, bonuses, cash disbursements, gratuities and gifts, in any form, paid to any non-licensee customer, employee or agent. In addition, a wholesaler, manufacturer or importer must keep an itemization of all advertising items charged to advertising within Oregon. Receipts, vouchers or other evidence of obligation must support all these disbursements.

(7) Every wholesaler, manufacturer or importer within Oregon and every out-of-state manufacturer must keep the records that sections (2), (3), (4) and (6) of this rule require for two years and have them available for inspection by authorized representatives of the Commission after 72 hours notice to the licensee or the licensee's agent.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471, 472 & 473, including 471.030, 471.392 - 402, 472.030 & 473.140 - 160
Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 65, f. 9-22-77, ef. 10-4-77; OLCC 11-1989, f. 10-31-89, cert. ef. 1-1-90; OLCC 9-1991, f. 5-24-91, cert. ef. 7-1-91; OLCC 12-2005, f. 12-19-05, cert. ef. 1-1-06

Oregon Public Employees Retirement System
Chapter 459

Adm. Order No.: PERS 23-2005
Filed with Sec. of State: 12-23-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 10-1-05
Rules Amended: 459-010-0003
Subject: Modifications to OAR 459-010-0003 are necessary to articulate the administration and the granting of membership eligibility.
Rules Coordinator: David K. Martin—(503) 603-7713

459-010-0003
Eligibility and Membership for the PERS Chapter 238 Program

(1) For the purpose of this rule:

(a) "Concurrent positions" means positions with two or more PERS participating employers where the positions occur together in any given calendar year.

(b) "Qualifying position" means:

(A) For an employee who is employed in a position or in concurrent positions designated as non-qualifying and performs 600 or more total hours of service in a calendar year, the position or concurrent positions will be considered qualifying and the employee shall be considered to have performed service in a qualifying position from the date of employment or January 1 of the calendar year in which the employee performed more than 600 hours of service, whichever is later.

(B) Except as provided in paragraph (A) of this subsection, for an employee who is employed in a position or concurrent positions designated as qualifying and performs less than 600 hours of service in a calendar year, the position or concurrent positions will be considered non-qualifying from the date of employment or January 1 of the calendar year in which the employee performed less than 600 hours of service, whichever is later.

(C) For purposes of determining qualification upon separation from employment, but not for any other purpose, if an employee was employed in a position or concurrent positions for less than a full calendar year and performed less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position or concurrent positions for the full calendar year, and if the employee performed 600 or more hours of service in the previous calendar year, the position or concurrent positions will be considered qualifying up to the date of separation.

(c) "Service" means any calendar month an employee:

(A) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

(B) Received a payment of "salary," as defined in ORS 238.005 or similar payment from workers compensation or disability.

(2) An employee qualifies as a member of PERS under ORS 238.015 if the employee:

(a) Has completed a 6 month waiting period as defined in ORS 238.015(1);

(b) Has been employed in a qualifying position;

(c) Is not otherwise ineligible for membership; and

(d) Has not elected to participate in an optional or alternate retirement plan as provided in ORS Chapters 243 and 353.

(3) An employee shall remain an active member in PERS if the employee is employed in a qualifying position that totals 600 or more hours of service per calendar year.

(4) If an employee hired into a non-qualifying position completed service meeting the definition of "qualifying position" under section (1)(b) of this rule, the employee shall qualify as an active member for that calendar year.

(5)(a) If an active member in a qualifying position is terminated or they separate from employment prior to completing 600 hours of service in a year, the member shall not receive any service credit for that year unless they qualify under section (1)(b)(C) above.

(b) If an active member in a qualifying position is terminated or they separate from employment prior to completing 600 hours of service in a year and do not qualify under section (1)(b)C), in addition to not receiving any service credit, all contributions for the year, employee and employer, shall be credited to the employer.

(6) The provisions of this rule are effective for all eligibility determinations made on or after January 1, 2006.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.015, 243.800 & 353.250
Hist.: PERS 5-2005, f. & cert. ef. 2-22-05; PERS 23-2005, f. 12-23-05, cert. ef. 1-1-06

Adm. Order No.: PERS 24-2005
Filed with Sec. of State: 12-23-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 10-1-05
Rules Amended: 459-010-0014
Subject: The adopted rule amendments simplify the standards by which creditable service would be granted to members in the PERS Chapter 238 Program and ease employer reporting of the necessary information.
Rules Coordinator: David K. Martin—(503) 603-7713

459-010-0014
Creditable Service in PERS Chapter 238 Program

(1) For purposes of this rule:

(a) "Service credit" has the same meaning as "creditable service" in ORS 238.005(5).

(b) "Major fraction of a month" means a minimum of 50 hours in any calendar month in which an active member is being paid a salary by a participating public employer and contributions are due to the system either by or on behalf of the member.

(2) An active member will be considered to have met the definition of performing service for a major fraction of a calendar month if:

(a) The member has performed at least 600 hours of qualifying service, as defined in OAR Chapter 459, in that same calendar year; and

(b) The member's employer(s) have reported salary and hours for a pay period occurring within that calendar month.

(3) An active member will not be considered to have met the definition of performing service for a major fraction of a calendar month if the member:

(a) Starts employment after the 15th of a calendar month, or

(b) Ends employment prior to the 16th of a calendar month, unless the member begins employment again in another qualifying position prior to the end of that calendar month.

(4) The granting or denial of creditable service based on the considerations in sections (2) and (3) above can be rebutted by the member or employer providing records that establish that the member did or did not in fact perform service for the requisite number of hours required to be considered a major fraction of a month under section (1).

(5) If the active member is a school employee, they may instead accrue one half year of service credit if the employee:

(a) Is or was employed in a qualifying position as defined in OAR chapter 459; and

(b) Is employed for all portions of a school year when it is normally in session.

(6) Except as provided for under section (3) of this rule, an employee may not accrue more than one full month of service credit for any number of hours worked in a calendar month and no more than one year of service credit for any number of hours worked in a calendar year.

(7) The provisions of this rule are effective for service credit determinations made on or after January 1, 2006.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.015
Hist.: PERS 6-2005, f. & cert. ef. 2-22-05; PERS 24-2005, f. 12-23-05, cert. ef. 1-1-06

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Adm. Order No.: PERS 25-2005
Filed with Sec. of State: 12-23-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 459-070-0001
Subject: Modifications to OAR 459-070-0001 are necessary to articulate the administration and the granting of membership eligibility.
Rules Coordinator: David K. Martin—(503) 603-7713

459-070-0001
Definitions

The words and phrases used in this Division have the same meaning given them in ORS 238A.005 unless otherwise indicated in this rule. Specific and additional terms for purposes of Divisions 70, 75 and 80 are defined as follows unless context requires otherwise:

(1) "Break in service" means a period concluding on or after August 29, 2003, during which a member of PERS performs no service, as defined below, with a participating public employer in a qualifying position for a duration of:

(a) Six or more consecutive calendar months; or

(b) 12 or more consecutive calendar months under one of the following circumstances:

(A) The member of PERS ceases performance of service for purposes that have qualified the member for family leave, as described in ORS 238A.025(3)(c), as determined by the employer; or

(B) The member of PERS ceases performance of service for career development purposes, as described in ORS 238A.025(3)(d).

(2) "Calendar month" means a full month beginning on the first calendar day of a month and ending on the last calendar day of the same month.

(3) "Calendar year" means 12 calendar months beginning on January 1 and ending on December 31 following.

(4) "Employee" has the same meaning as "eligible employee" in ORS 238A.005(4).

(5) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or collective bargaining agreement as having common characteristics.

(6) "Employee contributions" means contributions made to the individual account program by an eligible employee under ORS 238A.330, or on behalf of the employee under ORS 238A.335.

(7) "Member" has the same meaning given the term in ORS 238A.005(10).

(8) "Member account" means the account of a member of the individual account program.

(9) "Member of PERS" has the same meaning as "member" in ORS 238.005(12)(a), but does not include retired members.

(10) "OPSRP" means the Oregon Public Service Retirement Plan.

(11) "Overtime" means the salary or hours, as applicable, that an employer has designated as overtime.

(12) "PERS" means the retirement system established under ORS chapter 238.

(13)(a) "Qualifying position" means a position or positions in which an employee is expected to perform 600 or more combined hours of service in a calendar year.

(b) If an employee is employed in a position or positions not designated as qualifying and performs 600 or more total hours of service in a calendar year, the position or positions will be considered qualifying and the employee shall be considered to have performed service in a qualifying position from the date of employment or January 1 of the calendar year in which the employee performed more than 600 hours of service, whichever is later.

(c) Except as provided in subsection (d) of this section, if an employee is employed in a position or positions designated as qualifying and performs less than 600 hours of service in a calendar year, the position will be considered non-qualifying from the date of employment or January 1 of the calendar year in which the employee performed less than 600 hours of service, whichever is later.

(d) For purposes of determining qualification upon separation from employment in a position or positions, but not for any other purpose, if an employee was employed in a position or positions for less than a full calendar year and performed less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position or positions for the full calendar year, and if the employee performed 600 or more hours of service in the previous calendar year, the position or positions will be considered qualifying as of the date of separation.

(14)(a) "Salary" has the same meaning given the term in ORS 238A.005(16).

(b) Salary is considered earned when paid except as provided in subsection (c) of this section and as otherwise provided in ORS 238A.005(16)(b)(E).

(c) Salary is considered earned when earned for purposes of calculating final average salary.

(15) "School employee" has the meaning given the term in ORS 238A.140(6).

(16) "Service." Except as provided in subsection (c) of this section, a person is still providing "service," for purposes of determining whether a "break in service" has occurred under Section 2a, Chapter 733, Oregon laws 2003 (Enrolled HB 2020), during any calendar month that a member:

(a) Is in an employer/employee relationship; and

(b) Receives a payment of "salary," as that term is defined in ORS 238.005(20) or similar payment from workers compensation or disability.

(c) A member who is a school employee will be considered to provide "service" during any calendar month the institution is not normally in session so long as the member is in an employer/employee relationship both before and after the period the institution is not normally in session.

(17) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: 238A.450
Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330, 238A.335
Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 7-2005(Temp), f. & cert. ef. 2-22-05 thru 8-15-05; PERS 11-2005, f. & cert. ef. 6-16-05; PERS 25-2005, f. 12-23-05, cert. ef. 1-1-06

Oregon State Lottery
Chapter 177

Adm. Order No.: LOTT 15-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 12-1-05
Rules Repealed: 177-035-0000, 177-035-0110, 177-035-0115, 177-035-0120, 177-035-0130, 177-035-0140, 177-035-0150, 177-035-0160, 177-035-0200, 177-035-0210, 177-035-0220, 177-035-0230, 177-035-0300, 177-035-0310, 177-035-0400, 177-035-0600
Subject: OAR Division 35 is the Lottery's existing contracting rules. It is being repealed and being replaced with a new Division 36 - Lottery Procurement Rules, and a new Division 37 - Lottery Vendor Disclosure Rules, which are being filed separately from this filing.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

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Adm. Order No.: LOTT 16-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 12-1-05
Rules Adopted: 177-036-0000, 177-036-0010, 177-036-0020, 177-036-0030, 177-036-0040, 177-036-0050, 177-036-0055, 177-036-0060, 177-036-0070, 177-036-0080, 177-036-0090, 177-036-0100, 177-036-0110, 177-036-0115, 177-036-0120, 177-036-0130, 177-036-0140, 177-036-0150, 177-036-0160, 177-036-0170, 177-036-0180, 177-036-0190, 177-036-0200, 177-036-0210
Rules Repealed: 177-036-0000(T), 177-036-0010(T), 177-036-0020(T), 177-036-0030(T), 177-036-0040(T), 177-036-0050(T), 177-036-0055(T), 177-036-0060(T), 177-036-0070(T), 177-036-0080(T), 177-036-0090(T), 177-036-0100(T), 177-036-0110(T), 177-036-0115(T), 177-036-0120(T), 177-036-0130(T), 177-036-0140(T), 177-036-0150(T), 177-036-0160(T), 177-036-0170(T), 177-036-0180(T), 177-036-0190(T), 177-036-0200(T), 177-036-0210(T)
Subject: The Oregon Lottery has adopted new vendor contracting rules. The Lottery is adopting these rules to set forth the Lottery's process for the procurement of goods and services.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-036-0000
Definitions

The following definitions apply to all Oregon Administrative Rules contained in OAR chapter 177, division 36:

(1) "Addendum" or "Addenda" means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) "Advantageous" means in the Lottery's best interests, as assessed according to the judgment of the Lottery.

(3) "Award" means either the act or occurrence of the Lottery's identification of the Person with whom the Lottery will enter into a Contract.

(4) "Bid" means a response to an Invitation to Bid.

(5) "Bidder" means a Person that submits a Bid in response to an Invitation to Bid.

(6) "Closing" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(7) "Contract" means a purchase, lease, rental or other acquisition or sale or other disposal by the Lottery of Goods or Services.

(8) "Contract Price" means, as the context requires;

(a) The maximum payments that the Lottery will make under a Contract if the Contractor fully performs under the Contract;

(b) The maximum not-to-exceed amount of payments specified in the Contract; or

(c) The unit prices for Goods and Services set forth in the Contract.

(9) "Contractor" means the Person with whom the Lottery enters into a Contract.

(10) "Days" means calendar days.

(11) "Director" has that definition as defined in ORS 461.010(3).

(12) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen; and

(b) Require prompt execution of a Contract to remedy the condition; and

(c) Meet one of the following two conditions:

(A) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen; or

(B) The circumstances require immediate and decisive action to protect the security, credibility, or integrity of the Lottery or a Lottery game.

(13) "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including Personal Services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the Lottery is authorized by law to procure.

(14) "Information Technology Contract" means a Contract for the acquisition, disposal, repair, maintenance or modification of hardware, software or services for computers or telecommunications.

(15) "Invitation to Bid" or "ITB" means all documents, whether attached or incorporated by reference, used for soliciting Bids using a competitive bidding process in which specifications, price and delivery (or project completion) will be the predominant Award criteria.

(16) "Large Procurement" means the Lottery's procurement of Goods or Services exceeding $150,000 in accordance with the requirements of OAR 177-036-0040(4).

(17) "Lottery" has that definition as defined in ORS 461.010(1).

(18) "Lottery Commission" or "Commission" has that definition as defined in ORS 461.010(4).

(19) "Major Procurement" means a procurement that involves highly sensitive and highly secure Lottery information and includes but is not limited to, the printing of tickets used in Lottery games, Goods or Services involving the receiving or recording of number selection in any Lottery game, or any Goods or Services involving the determination of winners in any Lottery game. Disclosure requirements for this classification of procurements are contained in ORS 461.410, 461.700, and OAR 177-037-0030.

(20) "Offer" means a response to a Solicitation Document.

(21) "Offeror" means a Person who submits an Offer.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(23) "Personal Services" means the services or type of services performed under a Personal Services Contract.

(24) "Personal Services Contract" means a Contract or member of a class of Contracts whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, educator, information technology or other consultant, broadcaster or artist (including a photographer, filmmaker, painter, or sculptor.)

(25) "Proposal" means a response to a Request for Proposal.

(26) "Proposer" means a Person that submits a Proposal in response to a Request for Proposal.

(27) "Responsible Offeror" (also "Responsible Bidder" or "Responsible Proposer" as applicable) means a Person that has submitted an Offer and meets the standards set forth in OAR 177-036-0110, and that has not been debarred by the Lottery under OAR 177-036-0210. When used alone, "Responsible" means meeting the aforementioned standards.

(28) "Responsive Offer" (also "Responsive Bid" or "Responsive Proposal" as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation Document requirements. When used alone, "Responsive" means having the characteristics of substantially complying in all material respects with applicable Solicitation Document requirements.

(29) "Request for Proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting Proposals using a competitive Proposal process in which price is not the sole determining factor for Contract Award.

(30) "Scope" means the range and attributes of the Goods or Services described in the applicable Solicitation Document, or if no Solicitation Document, in the Contract.

(31) "Signed" or "Signature" means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person, with the intent to be bound.

(32) "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite Offers from prospective Contractors.

(33) "Specification" means any description of the physical or functional characteristics or of the nature of Goods or Services, including any requirement for inspecting, testing or preparing Goods or Services for delivery and the quantities of materials to be furnished under a Contract.

Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(34) "Vendor" has that definition as defined in ORS 461.010(8). For purposes of these Division 36 rules, Vendor does not include a Lottery game retailer as defined in ORS 461.010(7).

(35) "Work" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual requirement in a Contract and successful completion of all duties and obligations imposed by the Contract.

(36) "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0010
General Policy

It is the policy of the Lottery to conduct its procurement efforts to ensure a process that promotes fairness, integrity, security, and honesty to maximize revenue for the public purposes set forth in ORS 461.200. The purpose of these division 36 rules is to provide a framework for the Lottery procurement processes. These division 36 rules apply to the Lottery's procurement of Goods and Services.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0020
Application of the Lottery's Procurement Rules; Exceptions

(1) **General**: It is the policy of the Lottery, to the extent that is reasonable given the objectives of maximizing the net revenues of the Lottery, to conduct its contracting affairs in an open, competitive manner in accordance with ORS 461.440 and these division 36 rules.

(2) **Exceptions**: The Lottery may enter into the following classifications of Contracts without a competitive process:

(a) Contracts between the Lottery and a state agency or local government of this or another state, with the United States or a United States governmental agency, with an American Indian tribe or an agency of an American Indian tribe, or with a nation or a public agency in any nation other than the United States as permitted in ORS Chapter 190;

(b) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(c) Contracts for books, memberships, or subscriptions;

(d) Sponsorship agreements;

(e) Advertising and promotional Contracts, including, but not limited to, Contracts to place media, Contracts for talent, acquisition of prizes, and promotional Goods or Services. This exception does not apply to the selection of the Lottery's primary advertising agency;

(f) Contracts for video Lottery terminals and similar devices and video Lottery games (including the equipment and services necessary to operate and maintain the devices or games);

(g) Equipment repair and overhaul Contracts subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specifically trained personnel are required and such personnel are available from only one source;

(h) Investment contracts related to the payoff of major prize winners;

(i) Security studies;

(j) Price regulated items where the rate or price is established by federal, state or local regulatory authority;

(k) Purchase of used personal property; and

(l) Contracts with Lottery game retailers pursuant to ORS 461.300 through 461.335.

(3) **Reservation of Rights**: Although the Lottery is exempt from ORS Chapter 279A and 279B, which govern public contracts and procurement, the Lottery reserves the right to use, as guidelines to govern its procurement actions, relevant provisions of ORS Chapter 279A, and 279B, the Attorney General's Model Public Contract Rules (OAR chapter 137, divisions 46 and 47) and the Public Contracting Rules established by the Oregon Department of Administrative Services (OAR chapter 125, divisions 246 and 247). However, the procedures set forth in these statutes and administrative rules shall be guidance only and shall not obligate the Lottery to follow the procedures set forth in these statutes and administrative rules.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0030
Procurement Authority

(1) **General**: The Director is authorized to initiate procurements and enter into all Contracts and Contract amendments for Goods and Services that have been approved by the Lottery Commission in the annual financial plan (as it may be amended) or are otherwise pre-approved in concept at a Lottery Commission meeting, on behalf of the Lottery Commission except as follows:

(a) Unbudgeted procurements that will result in a Contract with a Contract Price in excess of $75,000 over the term of the Contract and Unbudgeted Contracts with a Contract Price in excess of $75,000 over the term of the Contract must be approved by the Lottery Commission. For purposes of section (1) of this rule, "Unbudgeted" means expenditures that have not been previously approved by the Commission in the Lottery's current financial plan or at a Commission meeting.

(b) The first Unbudgeted Contract amendment that increases the Contract Price to more than $75,000 and all subsequent Unbudgeted Contract amendments that increase the Contract Price by more than $75,000 since the last Unbudgeted Contract Amendment approved by the Commission, must be approved by the Commission.

(c) Contracts for Major Procurements must be approved by the Commission.

(2) **Commission Approved Contracts**: Notwithstanding the provisions of section (1) of this rule, the Commission having once approved a Contract or Contract amendment authorizes the Director to execute the Contract or Contract amendment, make all disbursements and payments as provided in the Contract or Contract amendment, without further action by the Commission.

(3) **Emergency Procurements**: Notwithstanding the provisions of section (1) of this rule, the Director is authorized to enter into a Contract awarded as an Emergency procurement as set forth in OAR 177-036-0040(6).

(4) **Rule or Statutory Authorization**: If a contract action is authorized by statute or rule, the Director is authorized to execute the Contract or any Contract amendment, and make all disbursements and payments as required by the Contract terms or the terms of the Contract amendment.

(5) **Price Reduction**: The Director is authorized, without further, specific approval action by the Commission, to execute any Contract amendment that results in a reduction of the price paid by the Lottery per item, unit or other measure of the Goods or Services provided under the Contract, and may exercise any option under a Contract previously approved by the Commission, where the option terms of the approved Contract establish a specific price for the Goods or Services to be acquired under the option.

(6) **Delegation by Director**: Pursuant to ORS 461.180(7), the Director may delegate, in writing, to any of the employees of the Lottery the exercise or discharge of any of the powers, duties or functions of the Director in these division 36 rules.

(7) **Legal Sufficiency Review**: When the Attorney General legal sufficiency review and approval is required under ORS 291.047, the Lottery must seek legal sufficiency review and approval of Contracts pursuant to ORS 291.047 and review of procurement documents pursuant to OAR 137-045-0035.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0040
Source Selection

(1) **General**: The Lottery shall Award Contracts for Goods or Services by one of the source selection methods in this rule. Except as provided in section (2), and sections (5) through (7) of this rule, the Lottery will generally conduct a competitive process for Goods or Services by issuing a Solicitation Document.

(2) **Small Procurements**: Any procurement of Goods or Services not exceeding $15,000 may be Awarded without a competitive process. The Lottery may Award a Contract in any manner deemed practical or convenient by the Lottery, including by direct selection or Award. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this rule.

(3) **Intermediate Procurements**: Any procurement of Goods or Services exceeding $15,000 but not exceeding $150,000 may be Awarded after seeking three competitive price quotes or Offers. The Lottery shall

keep a Written record of the sources of the Offers received. If three Offers are not reasonably available, fewer will suffice, but the Lottery shall make a Written record of the effort made to obtain the Offers. If a Contract is Awarded, the Lottery shall Award the Contract to the Offeror whose Offer will best serve the interests of the Lottery, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under OAR 177-036-0110. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this rule.

(4) **Large Procurements**: Any procurement of Goods or Services exceeding $150,000 may be Awarded after seeking three solicited competitive Offers. The Lottery shall keep a Written record of the sources of the Offers received. If three Offers are not reasonably available, fewer will suffice, but the Lottery shall make a Written record of the effort made to obtain the Offers. If a Contract is Awarded, the Lottery shall Award the Contract to the Offeror whose Offer will best serve the interests of the Lottery, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under OAR 177-036-0110.

(5) **Sole Source Procurements**: The Lottery may Award a Contract for Goods or Services without a competitive process when the Director, or a person designated in Writing by the Commission, determines in Writing, based on findings of current market research, that the Goods or Services are available from only one seller or source.

(6) **Emergency Procurements**:

(a) **General**: The Director may make Emergency procurements and enter into Contracts Awarded as Emergency procurements in an Emergency. Notwithstanding OAR 177-036-0030, the Director may make Emergency procurements and enter into Contracts Awarded as Emergency procurements regardless of the dollar amount of the Contract without the Commission's approval.

(b) **Major Procurements**:

(A) Notwithstanding subsection 6(a) of this rule, the Director may make an Emergency procurement or enter into an Emergency Contract for a Major Procurement only upon the approval of the Commission. If the Emergency procurement requires immediate approval of the Contract, the Commission may conduct its meeting as provided in ORS 192.670 and 192.640(3).

(B) The Director may establish an extension of an Emergency Contract for a Major Procurement without the approval of the Commission, where the original Contract specifically provides for the extension, the extension does not result in any change in the terms and conditions of the Contract other than an extension in its term, and the Contractor has maintained its status as an approved Major Procurement Vendor pursuant to OAR 177-037-0030 and 177-037-0060.

(C) The Director shall make reasonable efforts to report to the Commission in Writing, within five Days of the Contract Award, or by the next scheduled Commission meeting following the Contract Award date, whichever is later, any Emergency Contracts entered into by the Director. However, the Director's inability or failure to report to the Commission within this time shall not affect the validity of any Emergency Contract.

(7) **Alternative Procurement Methods**:

(a) The Lottery reserves the right to use an alternative procurement method if that method will be more likely to:

(A) Maximize the Lottery's net revenue;

(B) Achieve the specific business objective or business objectives of the procurement; or

(C) Aid the Director in fulfilling the statutory mandate to operate and administer the Lottery.

(b) Alternative procurement methods may include, but are not limited to, specialized Vendor prequalifications, multistep Bids or Proposals, single Proposer negotiations, competitive negotiations between two or more Proposers, brand name solicitations, and cooperative procurements. The Lottery shall conduct the alternative procurement method in accordance with the process set forth in the applicable Solicitation Document.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0050
Public Notice of Solicitation Documents

The Lottery may provide notice of a Solicitation Document by placing notice on an electronic procurement system, by sending the Solicitation Document to prospective Offerors, or by using any method it determines appropriate to foster and promote competition.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0055
Offer Submissions

Offerors may not submit facsimile and electronic Offers unless specifically authorized in the Solicitation Document.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0060
Addenda to Solicitation Documents

(1) **Issuance; Receipt**: The Lottery may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Lottery otherwise specifies in the Addenda.

(2) **Notice and Distribution**: The Lottery shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Lottery will provide notice of Addenda.

(3) **Timelines; Extensions**: The Lottery shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Lottery may extend the Closing if the Lottery determines prospective Offerors need additional time to review and respond to Addenda.

(4) **Request for Change or Protest to an Addendum of a Large Procurement**: Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum of a Large Procurement, as provided in OAR 177-036-0160, by the close of the Lottery's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 177-036-0160, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with OAR 177-036-0160, then the Lottery may consider an Offeror's request for change or protest to the Addendum only, and the Lottery shall not consider a request for change or protest to matters not added or modified by the Addendum.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0070
Pre-Closing Modifications or Withdrawal of Offers

(1) **Modifications**: An Offeror may modify its Offer in Writing prior to Closing. An Offeror shall prepare and submit any modifications to its Offer to the Lottery. The last Offer received by the Lottery prior to Closing will supercede any previous Offers received unless the Offer is identified by the Offeror as an alternate Offer.

(2) **Withdrawals**: An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, signed by an authorized representative of the Offeror, delivered to the Lottery and received by the Lottery prior to Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Lottery.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0080
Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) **Receipt**: The Lottery shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Lottery shall not open the Offer or modification upon receipt, but shall maintain it as confidential until Closing. If the Lottery inadvertently opens an Offer or a modification prior to Closing, the Lottery shall document the resealing for the procurement file and return the Offer or modification to its confidential state until Closing.

(2) **Opening**: The Lottery does not publicly open Offers.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0090
Late Offers, Withdrawals, and Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The

Lottery shall not consider late Offers, withdrawals or modifications except as permitted in OAR 177-036-0100.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0100
Mistakes

(1) **General**: To protect the integrity of the competitive procurement process and to assure fair treatment of Offerors, the Lottery shall carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

(2) **Lottery's Treatment of Mistakes**: The Lottery shall not allow an Offeror to correct or withdraw an Offer for an error of judgment. If the Lottery discovers certain mistakes in an Offer after Closing, but before Award of the Contract, the Lottery may take the following action:

(a) **Minor Informality**: The Lottery may waive, or permit an Offeror to correct a minor informality. A minor informality is a matter of form rather than substance when it is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include, but are not limited to, an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) **Clerical Error**: The Lottery may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Lottery's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, and instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) **Burden of Proof**: The Lottery may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error of judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Lottery does not grant the Offeror permission to withdraw the Offer;

(G) That the Lottery's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Lottery; and

(H) That the Offeror promptly gave notice of the claimed error to the Lottery.

(d) **Withdrawing Offers After Closing**: The criteria in subsection (2)(c) of this rule shall determine whether the Lottery will permit an Offeror to withdraw its Offer after Closing. This criteria also shall apply to the question of whether the Lottery will permit an Offeror to withdraw without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Lottery based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually Awarded by the Lottery, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes**: The Lottery shall reject an Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award**: The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may only withdraw its Offer or rescind a Contract entered into pursuant to this division 36 only to the extent as permitted by applicable law.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0110
Responsibility of Offerors

(1) **General**: Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. The Lottery shall prepare a Written determination of non-Responsibility of an Offeror if the Offeror does not meet the standards of Responsibility.

(2) **Considerations**: In determining whether an Offeror has met the standards of Responsibility, the Lottery shall consider whether the Offeror:

(a) **Business Qualifications**: Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities;

(b) **Record of Performance**: Has a satisfactory record of contract performance. The Lottery shall carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Lottery shall determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Lottery may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Lottery shall make its basis for determining an Offeror non-Responsible under this subsection part of the procurement file;

(c) **Record of Integrity**: Has a satisfactory record of integrity. An Offeror may lack integrity if the Lottery determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or making of false certifications. The Lottery may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The Lottery shall make its basis for determining an Offeror non-Responsible under this subsection part of the procurement file;

(d) **Legally Qualified**: Is qualified legally to contract with the Lottery; and

(e) **Necessary Information**: Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Lottery concerning Responsibility, the Lottery shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0115
Vendor Disclosure Requirements

Prospective Offerors shall comply with all disclosure requirements set forth in the Lottery's Vendor Disclosure Rules in OAR chapter 177, division 37.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0120
Offer Evaluation and Award

(1) **Lottery Evaluation**: The Lottery shall evaluate Offers only as set forth in the Solicitation Document and in accordance with applicable law. The Lottery shall not evaluate Offers using any other requirement or criterion.

(2) **Clarification of Offers**: After Closing, the Lottery may conduct discussions with apparent Responsive Bidders or Proposers for the purpose of clarification to assure full understanding of the Offer. The Lottery shall document clarification of any Offer in the procurement file.

(3) **Preference for Oregon Goods and Services**: The Lottery shall prefer Goods and Services that have been manufactured or produced in Oregon if price, fitness, availability, and quality are otherwise equal.

(a) **Award When Offers Identical**: When the Lottery receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Lottery shall award the Contract based on the following order of precedence:

(A) The Lottery shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services that have been manufactured or produced in Oregon.

(B) If two or more Offerors submit identical Offers, and both offer Goods or Services manufactured or produced in Oregon, the Lottery shall award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(C) If the Lottery receives identical Offers, and none of the identical Offers offer Goods or Services manufactured or produced in Oregon, the Lottery shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(b) **Determining if Offers are Identical**: The Lottery shall consider Offers identical in price, fitness, availability and quality as follows:

(A) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services described in the Invitation to Bid at the same price.

(B) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposal.

(c) **Determining if Goods or Services are Manufactured or Produced in Oregon**: For the purposes of complying with section (3) of this rule, Lottery may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Lottery, any information the Lottery determines appropriate and necessary to allow the Lottery to determine if the Goods or Services are manufactured or produced in Oregon. The Lottery may use any reasonable criteria to determine if Good or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Lottery applies those criteria equally to each Bidder or Proposer.

(d) **Procedure for Drawing Lots**: In any instance when this section calls for the drawing of lots, the Lottery shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(4) **Negotiations**: Except as permitted by section (2) of this rule, the Lottery shall not negotiate with any Bidder. The Lottery may conduct discussions or negotiate with Proposers in accordance with the process set forth in the Solicitation Document.

(5) **Award**:

(a) **General**: The Lottery shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous Responsible Proposal unless otherwise stated in the Solicitation Document. The Lottery may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the best interest of the Lottery as determined by the Lottery.

(b) **Multiple Items**: A Solicitation Document may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Lottery's expected purchases, or grand total of all items.

(c) **Multiple Awards**: Notwithstanding subsection 5(a) of this rule, the Lottery may Award multiple Contracts in accordance with the criteria set forth in the Solicitation Document. If a Solicitation Document permits the Award of multiple Contracts, the Lottery shall specify in the Solicitation Document the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services. A notice to prospective Offerors that multiple Contracts may be Awarded for any Solicitation Document shall not preclude the Lottery from Awarding a single Contract for such Solicitation Document.

(d) **Partial Awards**: If after evaluation of Offers, the Lottery determines that an acceptable Offer has been received for only part of the requirements of the Solicitation Document:

(A) The Lottery may Award a Contract for the part of the Solicitation Document for which acceptable Offers have been received; or

(B) The Lottery may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(e) **All or None Offers**: The Lottery may Award all or none Offers if the evaluation criteria specifies an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0130
Notice of Intent to Award

At least seven Days before the Award of a Contract as a Large Procurement, the Lottery shall provide all Offerors Written notice of the Lottery's intent to Award a Contract, unless the Lottery determines that circumstances require prompt execution of the Contract, in which case the Lottery may provide a shorter notice period.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0140
Availability of Award Decisions

(1) **Contract Documents**: To the extent required by the Solicitation Document, the Lottery shall deliver to the successful Offeror a Contract, Signed purchase order, or other agreements as applicable.

(2) **Availability of Award Decisions**: A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals by submitting a form provided by the Lottery. In addition, the Lottery may make available tabulations of Bids and Proposals through an electronic procurement system.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0150
Cancellation, Rejection, and Delay of a Solicitation

(1) **General**: Any procurement described in a Solicitation Document may be cancelled, or any or all Offers may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the Lottery as determined by the Lottery. The reasons for the cancellation or rejection must be made a part of the solicitation file. The Lottery is not liable to any Offeror for any loss or expense caused by or resulting from the cancellation or rejection of a Solicitation Document, Offer, or Award.

(2) **Offer Findings**: The Lottery shall reject an Offer upon the Lottery's finding that the Offer:

(a) Is contingent upon the Lottery's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(b) Takes exceptions to terms and conditions (including Specifications) set forth in the Solicitation Document;

(c) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(d) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(e) Is late;

(f) Is not in substantial compliance with the Solicitation Document requirements; or

(g) Is not in substantial compliance with all prescribed public procurement procedures.

(3) **Offeror Findings**: The Lottery shall reject an Offer upon the Lottery's finding that the Offeror:

(a) Has been debarred pursuant to OAR 177-036-0210;

(b) Has not properly executed Bid or Proposal security as required by the Solicitation Document; or

(c) Is non-Responsible as defined in OAR 137-036-0110.

(4) **Disposition of Offers**:

(a) **Prior to Closing**: If the Lottery cancels a procurement prior to Closing, the Lottery shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Lottery shall open the Offer to determine the source and then return it to the Offeror.

(b) **After Closing**: If the Lottery cancels a procurement after Closing, the Lottery shall keep the Offers in the procurement file.

(c) **Rejection of All Offers**: If the Lottery rejects all Offers, the Lottery shall keep all Offers in the procurement file.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0160
Request for Change or Clarification of Large Procurements

(1) **Purpose**: A prospective Offeror may request changes or clarifications to the procurement process or the Solicitation Document for Large Procurements.

(2) **Delivery**: Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a request for change or clarification in Writing to the Lottery no less than ten Days prior to Closing.

(3) **Content**: A prospective Offeror's request for change or clarification shall include a statement of the desired changes or clarification to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror has based its request.

(4) **Lottery's Response**: The Lottery shall not consider a Prospective Offeror's request submitted after the deadline established for submitting such request under this rule, or such different time as may be provided in the Solicitation Document. The Lottery shall consider the request if it is timely filed and meets the conditions set forth in this rule. The Lottery shall issue a Written disposition of the request. If the Lottery upholds the request, in whole or in part, the Lottery may in its sole discretion either issue an Addendum reflecting its disposition or cancel the Solicitation Document.

(5) **Extension of Closing**: If the Lottery receives a request from a prospective Offeror in accordance with this rule, the Lottery may extend Closing if the Lottery determines an extension is necessary to consider and respond to the request.

(6) **Clarification**: Prior to the deadline for submitting a request, a prospective Offeror may request that the Lottery clarify any provision of the Solicitation Document. The Lottery's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Lottery unless the Lottery amends the Solicitation Document by Addendum.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0170
Award Protests of Large Procurements

(1) **Purpose**: An Offeror may protest Lottery's intent to Award of a Contract as a Large Procurement.

(2) **Delivery**: An Offeror must deliver the protest to the Lottery no later than five Days after the date of issuance of intent to Award the Contract, unless otherwise stated in the Solicitation Document.

(3) **Content of Protest**: All protests must be in Writing and signed by the Offeror. The protest must state all facts and arguments on which the Offeror is basing the protest. The protest must claim, and state facts which substantiate a claim, that:

(a) All lower Bids or higher ranked Proposers are ineligible to receive the Contract Award because they are non-Responsive; or

(b) The Lottery committed a material violation of a provision in the Solicitation Document or of an applicable statute or administrative rule, and but for the alleged material violation, Offeror would have been the lowest Bidder or highest ranked Proposer.

(4) **The Lottery's Response**: The Lottery's Procurement and Contract Manager shall review the protest and shall fax and mail the Offeror a Written decision within three Days of receipt of the Written protest to the fax number and address provided in the Offer. Any Written decision from the Lottery may include the Lottery's final opinion of the protest, a notice to the Offeror that the Lottery needs additional time in which to evaluate the protest, or other information to the Offeror.

(5) **Appeal**:

(a) **Appeal to the Director**:

(A) If the Lottery Procurement and Contract Manager's decision is adverse to the Offeror, the Offeror may appeal the Lottery Procurement and Contract Manager's decision by submitting a Written appeal to the Director within three Days after the date of issuance of the Lottery Procurement and Contract Manager's Written decision.

(B) The Director shall review any appeal of the Lottery Procurement and Contract Manager's decision and shall fax and mail a Written decision to the Offeror within three Days of receipt of the Written appeal to the fax number and address provided in the Offer. The Director will not consider grounds or arguments in favor of the protest that were not first presented to the Lottery Procurement and Contract Manager.

(b) **Appeal to Lottery Commission**:

(A) If the decision of the Director is adverse to the Offeror, the Offeror may submit a subsequent Written appeal of the Director's decision to the Lottery Commission by delivering the subsequent Written appeal to the Director within two Days after the date of issuance of the Director's Written decision.

(B) The Lottery Commission, in considering the appeal, shall review the documentation presented to the Lottery Procurement and Contract Manager and the Director, and thereafter, shall base its decision on such material. The Lottery Commission shall respond to the appeal on or before the next regularly scheduled Commission meeting, but in no event shall the Lottery Commission be required to review and respond to the appeal in less than ten Days of receipt of the Written appeal. The Lottery Commission will not consider grounds or arguments in favor of the appeal that were not first presented to the Lottery Procurement and Contract Manager. The Lottery Commission will not review and rescore the evaluation scores.

(6) **Late Submission**: The Lottery shall not consider an Offeror's protest or appeal submitted after the timelines established for submitting such protest or appeal under this rule or such different time period as may be provided in the Solicitation Document. If the Lottery upholds the protest, in whole or in part, it may in its sole discretion either Award the Contract to the successful protestor or cancel the solicitation.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0180
Contract Amendments

(1) **Additional Goods or Services**: The Lottery may amend a Contract without additional competition to add additional Goods or Services within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract, subject to the following conditions:

(a) The additional Goods or Services are required by reason of existing or new laws, rules, regulations, or ordinances that affect the performance of the original Contract; or

(b) The prices for the Goods or Services are modified only as follows:

(A) When prices for the Goods or Services are based on unit prices, unit prices that establish the cost basis for the additional Goods or Services were provided in the Offer or original Contract and those prices do not increase except as permitted by an escalation clause in the Contract; or

(B) When prices for the Goods or Services are not based on unit prices, options that establish the cost basis for the additional Goods or Services were provided in the Solicitation Document, Offer, or original Contract.

(2) **Renegotiated Contract**: The Lottery may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is Advantageous to the Lottery subject to the following conditions:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, within the Scope the Contract;

(b) The Lottery must determine that, with all things considered, the renegotiated Contract is at least as favorable to the Lottery as the original Contract; and

(c) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document or Contract after combining the initial and extended terms.

(d) If a Contractor offers a lower price in exchange for a term or condition that was expressly rejected in the original solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.

(e) If the Contract is the result of a cooperative procurement under ORS 279A.200 through 279A.225, the amended Contract may not materially change the terms, conditions, and prices of the original Contract.

(3) **Small or Intermediate Contract**: The Lottery may amend a Contract Awarded as a small or intermediate procurement pursuant to sections (1) or (2) of this rule, but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than twenty-five percent of the original Contract Price, unless the amendment increasing the original Contract Price to more than twenty-five percent of the original Contract Price is approved in Writing by the Director prior to execution of the amendment.

(4) **Emergency Contract**: The Lottery may amend a Contract Awarded as an Emergency procurement if the Emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing Emergency.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0190
Cooperative Procurements

The Lottery may participate in, sponsor, conduct, or administer cooperative procurements pursuant to ORS 279A.200 through 279A.225.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0200
Performance Bond

(1) **General**: A successful Offeror for a Major Procurement, as defined in OAR 177-037-0000(2), shall promptly execute and deliver to the Lottery a performance bond in the amount specified in the Solicitation

Document or Contract as provided in ORS 461.430. A successful Offeror shall also promptly execute and deliver to the Lottery a performance bond for other procurements, as required by the Solicitation Document or Contract, when the Lottery determines a performance bond is necessary to protect the interests of the Lottery.

(2) **Authorized Surety**: The performance bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance bond must be payable to the Lottery as specified in the Solicitation Document or Contract, and must be in a form approved by the Lottery.

(3) **Emergency Procurement**: In cases of an Emergency procurement, the requirement of furnishing a performance bond for the performance of a Major Procurement Contract may be excused by the Lottery if a declaration of such Emergency is made in accordance with OAR 177-036-0040(6).

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

177-036-0210
Debarment of Prospective Offerors

(1) **General**: The Lottery may debar a prospective Offeror from consideration for Award of Lottery Contracts for the reasons listed in section (2) of this rule after providing the prospective Offeror with notice and a reasonable opportunity to be heard.

(2) **Factors for Consideration**: A prospective Offeror may be debarred from consideration for Award of Lottery Contracts if:

(a) The prospective Offeror has committed a violation of a material Contract provision. A violation may include but is not limited to a failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment.

(b) The prospective Offeror has been convicted of a criminal offense resulting from obtaining or attempting to obtain a public or private contract or subcontract or resulting from the performance of such contract or subcontract.

(c) The prospective Offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective Offeror's responsibility as a contractor or that the Lottery determines may affect the honesty, fairness, integrity or security of the Lottery or any Lottery games.

(d) The prospective Offeror has been convicted under state or federal antitrust statutes.

(e) The prospective Offeror does not carry worker's compensation or unemployment insurance as required by statute.

(3) **Period of Debarment**: The Lottery shall determine the period of debarment of a prospective Offeror, however the period shall not exceed three years.

(4) **Responsibility**: Notwithstanding the limitation on the term for debarment in section (3), the Lottery may determine that a previously debarred Offeror is not Responsible prior to Contract Award.

(5) **Imputed Knowledge**: The Lottery may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(6) **Limited Participation**: The Lottery may allow a debarred Person to participate in a competitive process and Contracts on a limited basis during the debarment period upon Written determination by the Director that participation is Advantageous to the Lottery. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

(7) **Decision**:

(a) The Lottery shall issue a Written decision to debar a prospective Offeror under this rule. The decision must:

(A) State the reasons for the debarment; and

(B) Inform the debarred prospective Offeror of the appeal rights of the prospective Offeror under section (8) of this rule.

(b) The Lottery shall send a copy of the decision immediately to the debarred prospective Offeror by certified mail, return receipt requested, or by personal service.

(8) **Appeal**:

(a) The procedure for appeal from the Lottery's debarment of a prospective Offeror under this rule, shall be in accordance with this section and is not subject to ORS Chapter 183 except when specifically provided by this section.

(b) Upon receipt of a notice from the Lottery of a decision to debar under this rule, a prospective Offeror that wishes to appeal the decision shall, within three business days after receipt of the decision, notify the Lottery Director that the prospective Offeror appeals the decision and requests a hearing as provided in this section.

(c) Upon receipt of the prospective Offeror's notice of appeal and request for hearing, the Lottery Director shall promptly notify the prospective Offeror appealing of the time and place of the hearing. The Director shall conduct the hearing and decide the appeal within thirty Days after receiving the notice from the prospective Offeror. The Director shall set forth in Writing the reasons for the hearing decision.

(d) At the hearing, the Director shall consider de novo the notice of debarment, the reasons listed in section (2) of this rule on which the Lottery based the debarment, and any evidence provided by the Lottery and the prospective Offeror. In all other respects, a hearing before the Director shall be conducted in the same manner as a contested case under ORS 183.415(3) to (6) and (9), 183.425, 183.440, 183.450, and 183.452. The hearing shall not be considered a contested case hearing under ORS Chapter 183 in any other respects.

(e) The prospective Offeror may seek judicial review of the Director's decision as set forth in ORS 183.484 for orders other than contested cases.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05

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Adm. Order No.: LOTT 17-2005
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Rules Adopted: 177-037-0000, 177-037-0010, 177-037-0020, 177-037-0030, 177-037-0040, 177-037-0050, 177-037-0060, 177-037-0070
Rules Repealed: 177-037-0000(T), 177-037-0010(T), 177-037-0020(T), 177-037-0030(T), 177-037-0040(T), 177-037-0050(T), 177-037-0060(T), 177-037-0070(T)
Subject: The Oregon Lottery has adopted new vendor contracting rules. The Lottery has adopted these rules to set forth the application and disclosure requirements for approval to be a Lottery vendor or contractor. These rules also set forth the criteria for denying approval to be a Lottery vendor or contractor.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-037-0000
Definitions

The definitions in OAR 177-036-0000 apply to the terms used in this division. In addition, the following definitions apply:

(1) "**Control Person**" means a person described in ORS 461.410.

(2) "**General Procurement**" means a procurement for those Goods or Services that do not involve sensitive or secure Lottery information, and includes, but is not limited to, office supplies and equipment, media, vehicles, and promotional products. Disclosure requirements governing this classification are contained in OAR 177-037-0050.

(3) "**Major Procurement**" has that definition as defined in OAR 177-036-0000(19).

(4) "**Sensitive Procurement**" means a procurement that involves sensitive and secure information and includes, but is not limited to, Goods or Services involving audits for drawings and security, direct access to gaming computer systems, financial systems, receiving or recording of gaming information, locks and keys for terminals, and also includes the Lottery's primary advertising agency. Disclosure requirements for this classification of procurements are contained in ORS 461.700 and OAR 177-037-0040.

(5) "**Vendor**" means, for the purposes of this chapter, any Person interested in providing Goods or Services to the Lottery, but does not include a Lottery game retailer as defined in ORS 461.010(7).

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 17-2005, f. 12-21-05, cert. ef. 12-31-05

177-037-0010
General Policy

(1) **General**: It is the policy of the Lottery to conduct security background investigations on Lottery Vendors and Lottery Contractors to ensure the competence, integrity, background, good character, and the nature of the true business ownership and control of a Vendor or Contractor.

(2) **Disclosure**: To assure the security and integrity of the Lottery and Lottery games, the Director may require a Vendor, including any Control Person of the Vendor, or any employee or subcontractor of the Vendor that Lottery determines may have access to sensitive or secure Lottery information, to disclose and provide any information or disclosures deemed necessary to approve the Vendor as a Lottery Contractor. When required by these rules or by the Director, the Vendor must submit an application for approval to be a Lottery Contractor on disclosure forms provided by Lottery and must include all information and disclosures requested.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 17-2005, f. 12-21-05, cert. ef. 12-31-05

177-037-0020
Classification of Lottery Procurements

(1) **General**: A procurement or Contract is classified according to the degree to which a Contractor may have access to secure and sensitive Lottery information, including materials or systems, which in the opinion of the Director affect the honesty, fairness, integrity, or security of the Lottery or any Lottery games. The factors used to classify a procurement or Contract include, but are not limited to: The type of Goods or Services to be provided; access to and the potential risk to Lottery games technology or data, access to and the potential risk to Lottery financial systems; and the type of company involved. There are three classifications of Procurements: Major, Sensitive, and General.

(2) **Classification**: The decision to classify a procurement as a Major, Sensitive, or General Procurement is made by the Director in consultation with the Assistant Director for Security prior to the Lottery's issuance of a Solicitation Document. The classification of a procurement, disclosure requirements, and instructions for disclosure will be stated in the procurement Solicitation Document or in the procurement advertisement.

(3) **Classification Changes**: The Director's decision to classify a particular procurement under sections (1) and (2) of this rule is not binding on the Lottery and in no way limits the authority of the Commission or the Director to change the procurement or Contract classification, or the disclosure requirements at any time prior to the award of a Contract or during the term of a Contract.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 17-2005, f. 12-21-05, cert. ef. 12-31-05

177-037-0030
Major Procurements

(1) **General**: In all solicitations for a Major Procurement, Lottery shall clearly identify the solicitation as a Major Procurement.

(2) **Disclosure**: All procurements classified as a Major Procurement require an extensive security background investigation and are subject to all disclosure requirements specified in ORS Chapter 461 and OAR chapter 177, division 37, and any other special disclosure requirements deemed necessary by the Director or the Commission. An Offer or Proposal for a Major Procurement must include an application for approval to be a Lottery Contractor, including all required information and disclosures, and must be on forms provided by the Lottery.

(3) **Continuing Disclosure Requirement**: Unless otherwise specified in the Contract for a Major Procurement, during the term of the Contract a Contractor must update any information or disclosures submitted in the application for approval to be a Lottery Contractor within thirty days of any change.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 17-2005, f. 12-21-05, cert. ef. 12-31-05

177-037-0040
Sensitive Procurements

(1) **General**: In all solicitations for a Sensitive Procurement, Lottery shall clearly identify the solicitation as a Sensitive Procurement

(2) **Disclosure**: All procurements classified as a Sensitive Procurement require a security background investigation and are subject to all disclosure requirements specified in OAR chapter 177, division 37 and the Solicitation Document, and any other special disclosure requirements deemed necessary by the Director or the Commission. An Offer or Proposal for a Sensitive Procurement must include an application for approval to be a Lottery Contractor, including all required information and disclosures, and must be on forms provided by the Lottery.

(3) **Continuing Disclosure Requirement**: Unless otherwise specified in the Contract for a Sensitive Procurement, during the term of the Contract a Contractor must update any information or disclosures submitted in the application for approval to be a Lottery Contractor within thirty days of any change.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 17-2005, f. 12-21-05, cert. ef. 12-31-05

177-037-0050
General Procurements

(1) **General**: In all solicitations for a General Procurement, Lottery shall clearly identify the solicitation as a General Procurement.

(2) **Disclosure**: A procurement classified as a General Procurement does not require a security background investigation, unless deemed necessary by the Director or the Commission.

(3) **Continuing Disclosure Requirement**: If a security background investigation is deemed necessary, the Solicitation Document shall include the instructions for disclosure. An Offer or Proposal must include an application for approval to be a Lottery Contractor, including all required information and disclosures, and must be on forms provided by the Lottery. Unless otherwise specified in the Contract, during the term of the Contract a Contractor must update any information or disclosures submitted in the application for approval to be a Lottery Contractor within thirty days of any change.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 17-2005, f. 12-21-05, cert. ef. 12-31-05

177-037-0060
Vendor Application and Contract Disclosure Requirements

(1) **General**: The Director may require any degree or type of disclosure deemed necessary to assure the security and integrity of the Lottery and Lottery games.

(2) **Forms and Procedures**: The Director shall approve all the forms and procedures to be used by all Vendors who wish to apply for approval to be a Lottery Contractor.

(3) **Vendor Submission**: A Vendor must complete the required application for approval to be a Lottery Contractor and provide any information and disclosures required, as determined by the Director and the Assistant Director of Security within the guidelines and timelines set forth in the Solicitation Document or as otherwise required by the Director and the Assistant Director for Security.

(4) **Complete Disclosure Required**: The Director may reject an application for approval to be a Lottery Contractor if the Vendor has not provided all the information and disclosures required to be submitted or if any of the information or disclosures submitted is not accurate, current, or truthful.

(5) **Continuing Disclosure Requirement**: If during the evaluation period for an Offer or Proposal there are any changes to the information or disclosures submitted, a Vendor must update the information as soon as possible. After the Award, a Vendor selected must immediately update any changes to the information or disclosures submitted.

(6) **Status Changes**: Unless other standards are established in a Contract, during the term of the Contract any changes in the status of the Contractor, the status of a Control Person, or any employee or subcontractor for which information or disclosures were submitted, or the addition of any other Control Person, or the addition of any employee or subcontractor who may have access to sensitive or secure Lottery information, must be reported to the Director within thirty days of the known change. Those whose status has changed or who have been added as a Control Person or added as an employee or subcontractor who the Lottery determines may have access to sensitive or secure Lottery information will be required to submit the required information and disclosures. If there has been no change in Vendor status or Control Persons, the Vendor is required to certify annually on their vendor Contract anniversary date that there has been no change.

(7) **Burden of Proof**: The burden of proof for satisfying the Lottery's disclosure requirements resides with the Vendor or Contractor.

(8) **Vendor Consent**: Each Vendor who submits an application for approval to be a Lottery Contractor must consent in writing to the examination of all accounts, bank accounts, and Vendor records under the Vendor's possession or control. If required by the Director, a Vendor must permit an inspection of any portion of the Vendor's business premises deemed necessary by the Lottery.

(9) **Investigation Costs**: As authorized under ORS 461.700(2), the Director may charge a Vendor an amount necessary to reimburse the Lottery for the costs associated with conducting the security background investigation if the Director determines the costs of the investigation exceed the usual costs of such investigation.

(10) **Acceptance of Risk**: Each Vendor or Contractor must accept any risk of adverse public notice, embarrassment, criticism, damages, or financial loss, including any publication or use by a third party, which may result from the disclosure or use by Lottery of any information or document submitted by the Vendor or Contractor. By submitting a Vendor application for approval to be a Lottery Contractor to the Lottery, the Vendor or Contractor expressly waives any claim against the State of Oregon, including the Lottery, the Director, the Commission, the Department of State Police, and their officers and employees for any and all damages resulting from the use or disclosure of any information or documents submitted to Lottery or from the use or disclosure of any information obtained by Lottery as a result of the security background investigation.

(11) **Indemnification**: By submitting an application for approval to be a Lottery Contractor to the Lottery, the Vendor or Contractor agrees to indemnify, defend, and hold harmless the State of Oregon, the Lottery Commission, the Lottery, the Department of State Police, their agents, officers, employees, and representatives, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses arising out of, or relating to, the use or disclosure of any information or disclosures submitted in the application for approval to be a Lottery Contractor or from the use or disclosure of any information obtained by Lottery as a result of the security background investigation. The Vendor's or the Contractor's obligations include, but are not limited to, any and all losses, damages, liabilities, settlements, judgments, fines, costs, fees, and expenses of any nature whatsoever, including, but not limited to, attorneys and other professional fees at trial and on appeal.

(12) **Chain of Custody**: All required information and disclosures must be submitted in a secure manner and may only be opened for review by the Assistant Director for Security or his designee, or by the Director.

(13) **Submission Constitutes Consent**: By submitting an Offer or Proposal, a Vendor binds itself, its officers, employees, agents, and any subcontractors to comply with all disclosure requirements established by the Director. Failure or refusal to comply with any applicable requirement may result in denial or revocation of a Contract Award. In the event of denial or revocation of the Award due to refusal or failure to comply with any applicable disclosure requirement set forth in these rules, the Vendor is liable under the bid bond or shall forfeit any security posted for the procurement.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 17-2005, f. 12-21-05, cert. ef. 12-31-05

177-037-0070
Criteria for Denying a Vendor or Control Person Application or Contract

(1) **General**: Before a Contract for a Major or Sensitive Procurement is Awarded, a security background investigation must be conducted by the Assistant Director for Security for any Vendor who is selected to be Awarded the Contract. The Assistant Director for Security shall conduct any other security background investigation specified by the Director.

(2) **Director's Determination**: The Director may deny or revoke approval to be a Lottery Contractor to any Vendor or Contractor when a security background investigation determines:

(a) **Business Qualifications**: The Vendor or Contractor does not demonstrate, either individually or through its employees or Control Persons, that the business has the ability and experience to establish, operate, and maintain the business operations necessary to provide the Goods or Services required in the Solicitation Document or under the Contract, or to provide the security necessary to protect sensitive and secure Lottery information, materials, or systems.

(b) **Financing**: The Vendor or Contractor does not demonstrate adequate financing to be able to provide the Goods or Services as required for performance of the Contract.

(c) **Integrity**: The Vendor, a Control Person of the Vendor, or any employee or subcontractor of the Vendor the Lottery determines may have access to sensitive or secure Lottery information, materials or systems:

(A) **Criminal Conviction**: Has been convicted of any crime in any jurisdiction.

(B) **Gambling Offense Conviction**: Has been convicted of any gambling offense in any jurisdiction.

(C) **Conduct Constituting a Crime**: Has been imposed with a civil judgment based in whole or in part upon conduct which constitutes a crime.

(D) **Material Omission**: Has omitted any material fact that was to be disclosed to the Lottery or its authorized agents during an initial or subsequent security background investigation.

(E) **Threat to the Public Interest**: Is an individual or entity whose background, including criminal, civil, and financial records, or whose reputation, or whose personal or business associations, pose a threat to the public interest of the state or to the security and integrity of the Lottery.

(F) **Character**: Is not of good character, honesty, or integrity.

(G) **Material Misstatement**: Has provided a material misstatement or untrue statement of a fact deemed to be material by the Director.

(H) **Other Conduct**: Has engaged in conduct the Director determines may, in any way, adversely affect the integrity, security, honesty or fairness of the Lottery.

(I) **Access**: Refuses to provide access to records or to inspection of any part of the business premises deemed necessary by the Lottery.

(J) **Association**: Has an association with a person or business having a known criminal background, or a person the Lottery Director determines is of disreputable character or conduct, and which may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the Lottery.

(d) **Ownership Interest**: The Vendor is qualified to be approved as a Lottery Contractor, but there is an ownership interest in the Vendor's business operation by a Person who is unqualified or disqualified to be approved as a Lottery Contractor.

(e) **Tax Violation**: The Vendor is in violation of any tax laws described in ORS 305.380(4).

(3) **Evaluation Factors**: In evaluating whether to deny approval to be a Lottery Contractor to any Vendor or based on subsection (2) of this rule, the Director may consider the following factors:

(a) **Nature and Severity**: The nature and severity of the conduct, incident, or circumstance;

(b) **Time**: The passage of time;

(c) **Intervening Factors**: Any intervening circumstances;

(d) **Multiple Offenses**: The number of offenses, crimes, or incidents;

(e) **Materiality and Relevancy**: The materiality and relevancy to the work to be performed; or

(f) **Extenuating Circumstances**: Any extenuating circumstances that affect or reduce the impact of the conduct, incident, offense or crime on the security, integrity, honesty, and fairness of the Lottery.

(4) **Director's Determination**: The Director's decision to deny approval to be a Lottery Contractor is final.

(5) **Revocation and Termination**: The denial criteria described in this rule may also constitute sufficient grounds for revoking a Contractor's approval to be a Lottery Contractor and for the termination, immediate or otherwise, of an existing Contract.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440
Hist.: LOTT 13-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 17-2005, f. 12-21-05, cert. ef. 12-31-05

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Adm. Order No.: LOTT 18-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 12-1-05
Rules Amended: 177-046-0020, 177-046-0110, 177-050-0025, 177-050-0027, 177-070-0025, 177-070-0035, 177-200-0020
Rules Repealed: 177-046-0020(T), 177-046-0110(T), 177-050-0025(T), 177-050-0027(T), 177-070-0025(T), 177-070-0035(T), 177-200-0020(T)
Subject: The amendments clarify that the Lottery may pay winning tickets and shares with cash at its own retail locations. Payments by cash will be limited to $50 per person per day. All payments to multiple owners of a winning ticket or share will be by check only.

Other amendments clarify that the Lottery's policy on a dishonored check issued by a retailer for a prize payment is applicable to prize payments for all Lottery tickets and shares, not just winning Scratch-it tickets.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-046-0020
Sale of Lottery Tickets and Shares

(1) General: The Director shall contract with retailers for the sale of Lottery tickets and shares. Only a retailer under contract with the Lottery may sell Lottery tickets or shares. Nothing in this section shall be construed to prevent a person who lawfully purchases or possesses a Lottery ticket or share from making a gift of such ticket or share to another.

(2) Retailer Sales Locations: Unless authorized by the Lottery, Lottery tickets or shares may only be sold by a Lottery retailer at the location listed in the retailer contract.

(3) Lottery Sales: The Lottery may designate its agents or employees to sell Lottery tickets or shares directly to the public, either in person or through electronic means.

(4) Sales Are Final: Unless otherwise provided in OAR Chapter 177, the sale of all Lottery tickets and shares is final. A player may not return a Lottery ticket or share for a refund of the purchase price or exchange unless the specific game rule provides otherwise. The Lottery is not liable for Lottery tickets or shares that are purchased in error.

(5) Distribution: The Director is authorized to arrange for the direct distribution of on-line terminals, ticket stock, and supplies shipped directly from the manufacturer or supplier to an authorized retailer.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05

177-046-0110
Payment of Prizes

(1) General: All winning Lottery tickets or shares may be presented to the Oregon Lottery for payment. Winning tickets or shares for prizes under $600 may also be presented for payment to the appropriate Lottery retailer specified in the applicable game rule.

(2) Mailing Address: Winners who mail a winning Lottery ticket or share to the Lottery must sign the back of the Lottery ticket or share, write the claimant's mailing address on the back of the Lottery ticket or share, and mail it to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended.)

(3) Headquarter's Address: Winners who present a claim in person at the Lottery may do so by bringing the winning Lottery ticket or share to the Oregon Lottery, Player Services, 500 Airport Road SE, Salem, Oregon 97301 during Lottery business hours.

(4) Retailer Validation and Payment of Prizes of $600 or Less: To determine whether a ticket or share presented for payment entitles the holder to a prize, a retailer shall validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on the back of each Lottery ticket or share into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due.

(a) A retailer is authorized to pay a prize of $600 or less and shall pay that prize in cash or check, or any combination thereof.

(b) If a retailer's prize payment check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the prize is authorized, the retailer has not paid the prize, and it is unlikely that the retailer will pay the prize, the Lottery may then issue a check to the player in the amount of the prize due less any applicable tax withholding.

(c) A retailer that pays a prize with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(5) Lottery Validation and Prize Payment: Upon validation of a winning ticket or share presented to the Lottery for payment, the Director may pay the amount of the prize to the player less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the Director shall deny the claim and inform the player.

(a) Lottery Prize Payment of $600 or Less: Payment may be made by check or in cash, or any combination thereof. Cash prize payments are limited to $50 per person per day. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(b) Lottery High Tier Prize Payments: For prize payments valued at $600 or more, the Lottery will pay a winning ticket or share by check, or subject to OAR 177-010-0050, may pay the prize in merchandise if the prize is merchandise.

(6) Claiming Tickets or Shares Jointly: If more than one name appears on a Lottery ticket or share or if a Lottery ticket or share is owned by two or more persons, the prize must be claimed in accordance with the following:

(a) General: All persons claiming ownership of the winning Lottery ticket or share must complete and sign the Lottery's request and release form. Each of the persons signing the form must indicate each person's proportionate share of the prize. Each person must receive at least $1.00. At least one of the persons claiming ownership of the ticket or share must sign the ticket or share. That person's signature must also appear on the request and release form. If a winning ticket or share is mailed to the Lottery with multiple signatures on it, the Director will mail the request and release form to the claimants.

(b) Deceased Signatories: A deceased signatory who dies before signing the request and release form will be presumed to have an ownership interest equal to that of the other signatories. In the event there is a deceased signatory, the Director may place a hold on payment for 60 days from the date of validation to allow co-owners the opportunity to seek a declaratory ruling.

(c) Relinquishment of Interest: When a person who has signed a Lottery ticket or share wishes to relinquish the person's ownership interest in the Lottery ticket or share, that person must sign the Lottery's release of ownership form relinquishing the person's ownership interest. In no event, will a person be permitted to relinquish ownership interest once it is determined that the person owes money for child support or other legal attachment has taken place. Once the Lottery receives the release of ownership form, it is irrevocable.

(d) Issuance of Prize Checks to Multiple Owners: If a validated winning ticket is claimed by multiple owners who are sharing a single prize, the Director will issue to each person claiming a share of the prize amount, a check for the portion of the prize amount claimed by each multiple owner, the total not to exceed the total prize amount. No cash payments will be made to multiple owners. However, the Director reserves the right to issue a single prize check to an individual whose name appears on the ticket or share instead of multiple prize checks to the owners of the ticket or share if the value of each individual prize check would be less than $50 or if the number of persons claiming a share of the prize exceeds 100 people. The Lottery shall pay multiple winners of a Lottery prize only through the Salem Lottery office. Lottery retailers are not authorized to pay multiple winners who share a single prize.

(e) Conflicting Information or Discrepancies: If there is conflicting information or discrepancies between the names on a winning ticket or share and the names on a claim form, the Lottery may hold payment until the winners resolve the conflicting information. Discrepancies include but are not limited to: Names or addresses scratched out or erased, unreadable or altered names or addresses.

(f) Investigations: In the exercise of its discretion, the Director may conduct an investigation to aid in the determination of the rightful owners prior to payment of any prize.

(g) Determinations: The Director's decisions and judgments in respect to the determination of a winning ticket or share, or the determination of the rightful owner or owners of a prize, or of any other dispute or matter arising from payment or awarding of prizes are final.

(7) Payment of Prizes Donated Anonymously to a Charitable Institution and Others:

(a) General: The Director may pay a prize according to written anonymous instructions received with a winning ticket or share. The recipient must be a natural person or a charitable institution as defined by Section 501(c)(3), Internal Revenue Code.

(b) Adult Recipient: If the intended recipient is a natural person of majority, the Director will contact them and make payment to them in accordance with the anonymous written instructions.

(c) Minor Recipient: If the intended donation benefits a natural person who is a minor, the Director will make payment in accordance with the Oregon Gifts to Minors Act, Chapter 126.

(d) Charitable Institution as Recipient: If the intended recipient is a charitable institution as defined by Section 501(c)(3), Internal Revenue Code, the Director will make payment only as follows:

(A) The Director will attempt to identify and contact the intended recipient. The intended recipient shall designate in writing an agent, (a natural person) to act on its behalf and to receive the prize payment on behalf of the recipient. The Director shall confirm both the written authorization and the agent. An intended recipient is encouraged to select a bonded agent.

(B) The agent shall appear in person at the Lottery headquarters to claim the prize payment on behalf of the intended recipient. The Director may confirm to the Director's satisfaction that the agent is authorized to accept the donation in the agent's own name on behalf of the intended recipient.

(C) Subsequent to receipt of acceptable identification, along with a completed claim form from the agent, and the Director's review and approval, the agent shall sign the agent's own name on the back of the winning ticket or share in the presence of a duly authorized Lottery official and immediately return it to the Lottery. The Director shall then make payment to the agent less any applicable taxes.

(D) If the Director can reasonably identify the donor, the Director shall not make payment as specified above, but shall instead contact the donor and notify the donor to retrieve the ticket or share upon presenting acceptable proof of identification. The donor may retrieve the winning ticket or share in person at the Lottery's office in Salem upon the presentation of acceptable proof of identification.

(e) Win for Life Prize: If the winning ticket received is a Win for Life top prize of $1,000 a week for life, the prize paid will be the lump sum guaranteed five year payment under the Win for Life game rules.

(f) Forfeiture of Unclaimed Prize: In the event that the Director is unable to locate the intended recipient or the anonymous donor, the winning ticket or share shall be retained until the end of the prize claim period. After the end of the prize claim period, the ticket or share shall constitute an unclaimed prize as described in OAR 177-010-0085 and shall be forfeited to the public purpose.

(g) Discharge of Lottery from Liability: The State of Oregon, its agents, officers, employees, and representatives, including but not limited to, the Oregon Lottery, its Director, agents, officers, employees, and representatives, are discharged of all liability upon payment of an anonymously donated prize in accordance with this rule and any applicable game rules to the extent that they do not conflict with this rule. The Lottery is not responsible in any way for the fulfillment or completion of the agreement between the intended recipient and the agent. The Lottery's decisions and judgment in respect to the determination of a winning ticket or share donated anonymously or any question or dispute arising from the payment of such a prize is final and binding on all parties. In the event a question or issue arises regarding payment of a prize donated anonymously, the Director may hold payment until the controversy is resolved, or the Lottery, or the intended recipient, or the agent for the intended recipient may petition a court of competent jurisdiction for instructions and a resolution of the matter.

(8) Social Security Numbers: Each United States resident who is to receive a payment of winnings greater than $600 shall furnish to the Lottery the information required on the Internal Revenue Form W-2G (or any other form required by the IRS,) including but not limited to the winner's name, address, and social security number. This disclosure is mandatory and the authority for such disclosure is 42 USC 405(c)(2)(C), 26 CFR 31.3402(q)-1(e), and ORS 461.715(1)(a). A winner's social security number will be used for the purpose of identifying child support obligors and submitting required documents to state and federal tax authorities.

(9) Payment Decisions: The final decision on whether any prize is paid is made by the Director. All prizes shall be paid within a reasonable time after they are validated. For any prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. The Director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to the Director's attention. All delayed payments will be brought up to date immediately upon the Director's validation and continue to be paid on each original anniversary date thereafter.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05

177-050-0025
Payment of Prizes

This rule provides procedures for a player to claim Scratch-it ticket prizes and for payment of prizes on validated winning tickets.

(1) Prizes of $600 or Less: Scratch-it ticket prizes of $600 and less shall be claimed by one of the following methods:

(a) Retailer Payment: The player may present the Scratch-it ticket to a Lottery retailer. The retailer shall determine whether a ticket entitles the holder to a prize, validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on the back of each ticket into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due. A retailer that is authorized to pay a prize of $600 or less shall pay that prize in cash or by check, or any combination thereof.

(b) Lottery Prize Payment: The player may submit a winning ticket in person to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon. A winning ticket may be submitted to the Lottery by mail. If mailed the player must sign the back of the ticket, write the player's mailing address on the back of the ticket, and mail it to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended). Upon validation of a winning ticket under OAR 177-050-0027, the Lottery will pay the amount of the prize to the player, less any applicable tax withholding. Payment may be made by check or in cash, or a combination thereof. Cash prize payments are limited to $50 per person per day. Payment may be made in person or by mail, except that the Lottery will not mail cash. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(2) Prizes Greater than $600: A player must claim a Scratch-it ticket prize of more than $600 by:

(a) Claiming in Person: Bringing the ticket to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours and presenting the ticket to the Oregon Lottery; or

(b) Claiming by Mail: Signing the back of the ticket, writing the player's mailing address on the back of the ticket, completing a winner claim form, and mailing it together with the winning ticket to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended). The winner claim form may be obtained from any Lottery retailer offering traditional games or from the Lottery at the addresses listed above.

(c) Upon validation of the winning ticket under OAR 177-050-0027, the Lottery will pay by check the amount of the prize to the player, less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(3) Validation and Payment of Lost, Damaged, or Destroyed Tickets for Prizes Greater than $600: If a player of a Scratch-it prize of more than $600 cannot submit an intact winning ticket because a Scratch-it game retailer lost, damaged, or destroyed the ticket while attempting to perform validation procedures on the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may still be validated provided the claim is made before the end of the one year claim period after the end of the game as described in OAR 177-046-0150(1).

(a) To claim a prize based on a lost, damaged, or destroyed ticket, the player shall obtain, complete, and sign a winner claim form and a claim affidavit furnished by the Lottery. The player shall submit the two completed forms along with any other evidence of the validation attempt that is in the player's possession (including, but not limited to, the "Claim at Lottery" slip produced by the terminal at the time of the validation attempt) to the Lottery at the addresses listed in section (1)(b) of this rule, either by mail (registered mail recommended) or in person at the Lottery office during Lottery business hours.

(b) The evidence submitted by the player must corroborate the validation attempt including, but not limited to, identification of the Lottery game retailer or clerk who attempted to validate the prize, the time and date of the validation attempt, the ticket validation number, the terminal number, and the prize amount.

(c) The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(d) A retailer who is the subject of an investigation conducted under this section is required to complete and provide to the Lottery a retailer affidavit form explaining the events in question.

(e) Based upon all the facts and information available, the Director shall make a determination whether prize payment is warranted and authorized.

(f) Upon the Director's determination that the ticket submitted under this section is a valid, winning ticket, and that the player is the proper person to whom a prize is payable, the Lottery shall present or mail a check to the player in payment of the appropriate prize amount less any applicable tax withholding.

(g) Payments of claims submitted under this section are restricted to the prize amount.

(h) The Director may sanction a Lottery game retailer for the loss, damage, or destruction of a winning Scratch-it game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(i) If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(4) Time Limit: A prize claim must be made under this rule within the time limit specified in OAR 177-046-0150(1).

(5) Invalid Tickets: Any ticket not passing all applicable validation checks is invalid and void for claims made under OAR (3). A player submitting an invalid or void ticket is ineligible for any prize and no prize shall be paid for such a ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250
Hist.: SLC 4-1985(Temp), f. & ef. 1-29-85; SLC 8-1985, f. & ef. 6-21-85; SLC 4-1986, f. & ef. 2-25-86; SLC 27-1986, f. & ef. 11-24-86; LC 7-1987, f. & ef. 4-29-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 8-1993, f. 9-22-93, cert. ef. 10-18-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05

177-050-0027
Ticket Validation Requirements

(1) General: Besides meeting all of the other requirements in OAR Chapter 177 and as may be printed on the back of each ticket, the following validation requirements shall apply with regard to Scratch-it game tickets.

(2) Requirements: Except as provided in section (3) of this rule and OAR 177-050-0025(3), to be a valid Scratch-it game ticket, all of the following requirements must be met:

(a) Where applicable, each of the play symbols must have a play symbol caption underneath, and each play symbol must agree with its play symbol caption.

(b) Each of the play symbols and captions must be present in its entirety and be legible.

(c) Each of the play symbols and its play symbol caption must be printed according to game specifications.

(d) The game number, pack number, ticket number, bar code, bar code number, and VIRN number must be present and all information shall correspond with the Lottery's computer records.

(e) The play symbols, play symbol captions, game number, pack-ticket number, and VIRN number must be right-side-up and not reversed in any manner.

(f) The ticket must have exactly one pack-ticket number.

(g) The VIRN number of an apparent high-tier winning ticket shall appear on the Lottery's official record of winning ticket VIRN numbers; and a ticket with that VIRN number shall not have been paid previously.

(h) Each of the following must correspond precisely to the artwork on file at the Lottery: play symbols on the ticket, play symbol captions, pack-ticket numbers, display printing, game numbers, retailer validation code; and ticket VIRN number.

(3) Lost, Damaged, or Destroyed Tickets for Prizes Greater than $600: If a player of a Scratch-it prize of more than $600 cannot submit an intact winning ticket because a Scratch-it game retailer lost, damaged, or destroyed the ticket while attempting to perform validation procedures on the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may still be validated as set forth in OAR 177-050-0025(3), provided the claim is made before the end of the one year claim period after the end of the game as described in OAR 177-046-0150(1).

(4) Damaged Tickets: Notwithstanding OAR 177-046-0090 and section (2) of this rule, the Director may pay the prize on a winning Scratch-it ticket that is inadvertently or accidentally damaged so that it cannot be validated either through the Lottery's central computer system or because it is missing information required under section (2) of this rule, if the ticket is readable and is validated as a winning ticket by the Lottery's Security Section. For purposes of this rule, a Scratch-it ticket is unreadable if there is insufficient information remaining on the ticket for the Lottery's Security Section to reconstruct and validate the ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250
Hist.: LC 7-1987, f. & ef. 4-29-87; LC 4-1988, f. & cert. ef. 1-26-88; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. e.f 7-2-93; LC 7-1995, f. & cert. ef. 7-7-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 13-2004(Temp), f. & cert. ef. 11-29-04 thru 5-27-05; LOTT 3-2005, f. 4-27-05, cert. ef. 4-28-05; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05

177-070-0025
Payment of Prizes

(1) Prizes of $600 or Less: To claim an On-Line game prize of $600 or less, the claimant may present the winning On-Line ticket to any On-Line retailer, or to the Oregon Lottery headquarters in Salem, Oregon:

(a) Retailer Payment: If the claim is presented to an On-Line retailer, the On-Line retailer shall validate the claim and, if determined to be a winning ticket, shall make payment of the amount due the claimant during the prize redemption hours agreed upon between the retailer and the Lottery. The retailer may pay prizes in cash or check, or any combination thereof. If the On-Line retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person.

(b) Lottery Payment: The claimant may submit a winning ticket, either by mail or in person to the Lottery for payment at the addresses listed in section (2)(a) below. Upon validation that the ticket is a winning ticket under OAR 177-070-0035, the Lottery shall pay the amount of the prize to the claimant, less any applicable tax withholding. Payment may be made by check or in cash, or any combination thereof. Cash prize payments are limited to $50 per person per day. Payment may be made in person or by mail, except that the Lottery will not mail cash. If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the claimant notified.

(2) Prizes Greater than $600:

(a) Winner Claim Form: To claim an On-Line prize of more than $600, the claimant shall obtain and complete a "Winner Claim Form." The claimant may submit the Winner Claim Form with the winning ticket in person to the Lottery Player Services Office, Oregon Lottery, 500 Airport Road SE, Salem, Oregon. A claimant may mail a winning ticket and Winner Claim Form to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended).

(b) Prize Payment: Upon validation of a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due, less any applicable tax withholding. The amount due shall be calculated according to the rules adopted for the particular On-Line game. If the ticket is determined to be a non-winning ticket or invalid, the claim shall be denied and the claimant notified. Non-winning or invalid tickets will not be returned to the claimant.

(c) Prize Payment of Lost, Damaged, or Destroyed Tickets:

(A) When a prize payment is authorized by the Director under OAR 177-070-0035(4), the prize payment shall be validated through the Lottery's central computer system on the last day of the eligible prize claim period. If the prize claim period expires on a weekend or on a holiday when the Lottery is closed, the expiration period will be extended to the end of the next working day. Following validation, the Lottery shall issue the prize payment in the usual course of Lottery business.

(B) Prize payments made under this subsection shall be restricted to the prize amount under the prize structure for the On-Line game in which the ticket was purchased.

(3) General Time Limitation: All prizes must be claimed within one year of the drawing in which the prize was won. In the event the final day of the one-year period falls on a weekend or a Lottery holiday, the claim period will be extended to end on the next business day. Any prize not claimed within the specified period shall be forfeited and thereafter placed into the Economic Development Fund established by ORS 461.540. The transfer shall take place at the same time the Lottery's next scheduled transfer of proceeds allocated for economic development is made.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.260
Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 20-1987, f. 10-26-87, ef. 11-2-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 7-1995, f. & cert. ef. 7-7-95; LOTT 4-2000(Temp), f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05

177-070-0035
Validation Requirements

(1) General: To be a valid winning On-Line ticket, all of the following conditions must be met:

(a) The ticket data must have been recorded in the Lottery's central computer system prior to the drawing and the information appearing on the ticket must correspond with the computer record;

(b) The ticket must be intact to the extent that all information appearing on the ticket corresponds with the Lottery's computer records;

(c) The ticket must not be altered or tampered with in any manner;

(d) The ticket must not be counterfeit or a duplicate of another winning ticket;

(e) The ticket must have been issued by an authorized On-Line retailer or dispensed by a player-activated terminal in an authorized manner;

(f) The ticket must not have been stolen or canceled;

(g) The ticket must not have been previously paid;

(h) The ticket is subject to all other confidential security checks of the Lottery.

(2) Ticket as Receipt: Except as provided in section (4) of this rule, a ticket is the only valid receipt for claiming a prize. A copy of a ticket or a play slip has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected.

(3) Validation Process: A ticket shall be validated through the Lottery's computer system.

(4) Validation of Lost, Damaged, or Destroyed Tickets Greater than $600: Notwithstanding the requirement that a winning On-Line game ticket be submitted to the Oregon Lottery for validation and prize payment, in the event that a Lottery retailer attempted to validate a winning On-Line game ticket with a prize of more than $600 and in the course of the validation process the retailer or an employee of the retailer lost, damaged, or destroyed the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may be validated.

(a) The claimant shall obtain, complete, and sign an Oregon Lottery "Winner Claim Form" and Oregon Lottery "Claim Affidavit." The claimant shall submit the "Winner Claim Form" and "Claim Affidavit" along with any other evidence of the validation attempt in the claimant's possession including, but not limited to, the "Claim at Lottery" slip produced by the terminal at the time of the validation attempt, to the Lottery Player Services Office, Oregon Lottery, 500 Airport Road SE, Salem, Oregon by mail or in person.

(b) To be validated, the information supplied on the winner claim form, the claim affidavit, and other evidence submitted by the claimant

must agree with the data recorded in the Lottery's central computer system including, but not limited to: Corroboration of the criteria set forth in section (1) of this rule except those specific criteria related to the physical properties of the lost, damaged, or destroyed game ticket; and corroboration of the validation attempt including, but not limited to, identification of the Lottery retailer or clerk who attempted to validate the prize, the time and date of the validation attempt, the ticket serial number, the terminal number, and the prize amount.

(c) The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(d) The Director shall, based on all the facts and information available, make a determination whether prize payment is warranted and authorized.

(e) The Director may assign sanctions to a Lottery retailer for the loss, damage, or destruction of a game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(f) A retailer who is the subject of an investigation conducted under this section is required to complete an Oregon Lottery retailer affidavit form explaining the events in question.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250
Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1991, f. & cert. ef. 9-25-91; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 4-2000(Temp), f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05

177-200-0020
Payment of Video Lottery Game Cash Slips

(1) Original Cash Slip: Except as set forth in sections (5) and (6) of this rule, an original cash slip is the only valid receipt for claiming prizes or for redeeming credits remaining on a terminal. A copy of a cash slip has no pecuniary or prize value and does not constitute evidence of a cash slip.

(2) Retailer Validation Requirements: A retailer shall pay a cash slip only if:

(a) The player presents the cash slip for payment at the retailer location that issued the cash slip.

(b) The player is a person 21 years of age or older and authorized to play under these rules or Oregon statutes.

(c) The cash slip is presented to the retailer within 28 days of the date it was properly issued.

(d) It is intact and legible and meets all the Lottery's security requirements.

(e) It is not stolen, counterfeit, fraudulent, lacking the correct captions, altered, or tampered with in any manner.

(f) The information appearing on the cash slip corresponds with the computer record of the cash slip data recorded in the Lottery's central computer system.

(g) It has not been previously paid.

(3) Retailer Validation Exception: If a cash slip is presented for payment, and the cash slip meets the requirements of sections (1) and (2) of this rule, except the cash slip is not intact or legible, the cash slip may nevertheless be paid by the retailer as follows:

(a) Software Validation: Upon notification by a player that a video lottery terminal issued a cash slip that is not intact or legible, the retailer shall request a validation number from the terminal. If the retailer is able to obtain a validation number from the terminal that corresponds to the time and amount of the credits claimed by the player, then the retailer shall validate the cash slip through the validation terminal and pay the player.

(A) Software Validation Report: If the retailer pays the player pursuant to section (3)(a) of this rule, the retailer must complete a Retailer Software Validation Report signed by the player and the retailer. The retailer must retain the report for one year. The retailer must group the reports by month and must make them available for audit by the Lottery immediately upon request. The retailer must retain and attach the damaged or illegible cash slips to the reports.

(b) Validation Number Unavailable: If the retailer is unable to obtain a validation number from the terminal that corresponds to the time and amount of the credits claimed by the player as required by subsection (3)(a), the player may request payment of the cash slip from the Lottery as provided in section (5) of this rule.

(4) Retailer Payment of Cash Slip: Upon validation of a cash slip as set forth in sections (2) and (3) of this rule, a retailer may pay the amount due in cash or check, or any combination thereof.

(a) If a retailer's check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the cash slip is authorized, the retailer has not paid the cash slip, and it is unlikely that the retailer will pay the cash slip, the Lottery may then issue a check to the claimant in the amount of the cash slip.

(b) A retailer that pays a cash slip with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(5) Lottery Validation and Payment of Cash Slips: Payment of a cash slip may be made at the Oregon Lottery, Player Services, 500 Airport Road SE, Salem, Oregon. The cash slip presented for payment must meet all of the requirements in sections (1) and (2) of this rule and must be delivered to the Lottery in person or by mail at P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended) before 5:00 P.M. within one year of the date that the cash slip was issued. If the final day of the one-year claim period falls on a weekend or an official Lottery holiday, the claim period shall be extended to the next Lottery business day at 5:00 P.M. Upon validation of a cash slip, the Lottery will pay the amount of the credits showing on the cash slip. For cash slips of $600 or less, payment may be made by check or in cash, or any combination thereof. Cash prize payments are limited to $50 per person per day. For cash slips of more than $600, payment will be made by check. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(6) Lack of Cash Slip or Validation Number: If a player does not have a cash slip, or a retailer was unable to obtain a validation number, the Lottery will conduct an investigation of a claim presented for payment to the Lottery. The investigation will determine the reasons or causes for the failure of the terminal to produce a cash slip or to print an intact and legible cash slip, and why the retailer was unable to obtain a validation number.

(a) Payment: The Lottery may pay the claim if the Lottery can determine from its investigation that the credit was on the terminal identified by the player at the time claimed, and that no cash slip has been paid on the claim.

(b) Signed Statement: The Lottery will not pay any such claim without a signed statement by a player. The player's statement must contain game play information that can be compared to data in the Lottery's central computer system that substantiates that the player won a prize in the amount and at the time claimed, and information from which the Lottery reasonably can determine that the claim has not been paid.

(7) Lottery Validation Exceptions: If a cash slip cannot be validated because the cash slip data is not recorded on the Lottery's central computer system, the Director may still authorize payment if:

(a) The Lottery conducts an investigation of the claim, and

(b) The Director concludes that the claimant was an authorized player and that the absence of a record of the cash slip data in the Lottery's central computer system was the result of either a technical problem in the video lottery terminal or a communications problem that prevented the recording of the credits in the Lottery's central computer system.

(8) Subsequent Claims: If a cash slip paid by a retailer is later submitted for payment to the Lottery, the Lottery may pay the cash slip and debit the retailer's account for the amount of the cash slip. The Lottery will conduct an investigation in accordance with section (6) of this rule to determine that the Lottery properly may make payment.

(9) Withholding of Payment: The Lottery may withhold payment of any cash slip claim presented to it until the expiration of the 28-day prize claim period at the retailer's location or until the completion of any investigation by the Lottery to determine if payment is proper.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250
Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LC 9-1993, f. 11-18-93, cert. ef. 12-1-93; LC 9-1994, f. 8-19-94, cert. ef. 9-1-94; LC 1-1995, f. 1-25-95, cert. ef. 3-1-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 4-1997, f. & cert. ef. 4-25-97; LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05

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Adm. Order No.: LOTT 19-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 11-1-05
Rules Amended: 177-050-0037
Subject: The amendments clarify that the receipt of a credit under this rule is discretionary with the Lottery; limit the time in which to report a loss; limit the reimbursable dollar amounts for stolen tickets ($2500 for the term of the retailer contract); preclude reimbursement for employee theft; and require the retailer to meet spe-

cific criteria (including having reasonable security measures in place to prevent theft).

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-050-0037
Stolen, Destroyed, and Damaged ScratchIt Tickets

(1) Defective, Damaged, or Destroyed Tickets: A Lottery retailer will not be billed for non-activated Scratch-it tickets that are defective, damaged, or destroyed, or the Lottery may credit a retailer's EFT account for activated Scratch-it tickets that are defective, damaged, or destroyed, under the following conditions:

(a) Manufacturing Defect: The defect is a result of a manufacturing error or damage during shipment; or

(b) Reasonable Control: The damage or destruction is due to circumstances beyond the retailer's reasonable control, such as a structure fire, flood, or other natural disaster; and

(c) Time Limitation: Damaged or defective Scratch-it tickets are returned to the Lottery within 30 days of discovering the damage or defect. When the Scratch-it tickets cannot be returned because they are completely destroyed or damaged beyond recognition, within 30 days the retailer must submit, on a form provided by the Lottery, a signed and notarized affidavit which describes the circumstances of how the Scratch-it tickets were destroyed or damaged. The Lottery's Finance and Accounting department will review inventory and sales records and confirm the value of the destroyed or damaged Scratch-it tickets.

(d) Director's Approval: Credit for defective, damaged, or destroyed Scratch-it tickets may be given only upon approval of the Director.

(2) Theft of Activated Tickets: The Lottery may credit a retailer's EFT account for one-half of the uninsured loss of activated Scratch-it tickets that are stolen from the retailer's premises subject to the following:

(a) Loss Amount: The theft results in a loss of $200 or more of activated Scratch-it tickets.

(b) Security Measures: The retailer has in place and was using at the time of the theft, reasonable security measures to prevent the theft of Scratch-it tickets. The Director will, in the Director's sole discretion, determine if a retailer was using reasonable security measures at the time of the theft. For purposes of this rule, "reasonable security measures" means that at a minimum, the retailer:

(A) Keeps Lottery Scratch-it tickets in Lottery approved dispensers, ITVMs, or stored in a locked container inaccessible to customers and unauthorized employees if the tickets are not yet being offered for sale;

(B) Has an inventory control process in place, including adequate record keeping, Scratch-it ticket access controls, and ticket activation controls; and

(C) Uses accounting or bookkeeping procedures that alert the retailer to the theft of activated Scratch-it tickets within seven business days of the theft.

(c) Reporting Requirements: The retailer must:

(A) Report the theft to a local law enforcement agency and to the Lottery within 48 hours of discovering the theft. The report must include the game, pack, and Scratch-it ticket numbers of the stolen tickets; and

(B) Submits to the Lottery a copy of a police report showing the theft was reported to the local law enforcement agency.

(d) Retailer Affidavit: The retailer must submit to the Lottery, on an affidavit form provided by the Lottery, a signed and notarized statement:

(A) Describing the circumstances of the theft, the game, pack, and Scratch-It ticket numbers of the stolen tickets, the total loss claimed, and a statement whether the retailer is self-insured or is covered by third-party insurance.

(B) The retailer must attach to the statement a copy of any documents substantiating the theft or loss, including, but not limited to, any inventory control records related to the stolen tickets and any financial records showing the monetary loss.

(e) Third Party Insurance: If the loss is fully covered by third-party insurance, the retailer is not eligible to receive a credit for the stolen tickets. If the loss is not entirely covered by third-party insurance, then the retailer may receive a credit for one-half of the balance of the loss if the retailer provides a letter from the insurance company setting forth the amount of loss claimed by the retailer and the amount paid to the retailer by the insurance company. The retailer must provide any other information needed by the Lottery to determine the amount of insurance coverage and the amount paid to the retailer for the loss.

(f) Cooperation: The retailer must fully cooperate with the Lottery and provide any documents or information requested. The retailer must cooperate fully in the prosecution of any criminal case resulting from the theft of the tickets or in any civil lawsuit for recovery of the amount of the loss paid to the retailer by the Lottery under this rule.

(g) Restitution from Criminal Prosecution of Judgment in Civil Action: The Director will not credit the retailer's EFT account for any amount of the loss that a court orders repaid as restitution or that is awarded to the retailer in a civil judgment or settlement. The Director may delay crediting the retailer for the loss claimed until criminal proceedings related to the theft of the tickets are concluded. The Lottery may recover from the retailer any amount ordered as restitution in a criminal case or received by the retailer pursuant to a civil judgment or settlement agreement.

(h) Employee Theft: In no event will the Director authorize credit to a retailer when the retailer is the victim of employee theft.

(i) Time Limitation: Notwithstanding the 48 hour reporting requirement of subsection (c) of this section, the Director may authorize a credit upon a showing that the failure to timely report was beyond the retailer's reasonable control. In no event will a retailer receive a credit for a theft that occurred more than 30 days prior to the date that the retailer reported the theft to the Lottery and the local law enforcement agency as set forth in subsection (b) of this section.

(j) Limit on Credit Amount: In no event may a retailer receive credit for a loss resulting from theft in an amount greater than $2500 during the term of the retailer contract.

(3) Theft of Non-Activated Tickets: The Lottery will not bill a retailer for Scratch-it tickets received but not activated that are stolen from the retailer's premise if the theft results in the loss of $200 or more of non-active Scratch-it tickets and the retailer complies with the requirements of subsections (2)(b) through (2)(h) of this rule. The limitations set forth in subsections (2)(g) through (2)(j) of this rule apply to the theft of non-activated Scratch-it tickets.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.210
Hist.: LC 2-1991, f. & cert. ef. 7-24-91; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 13-1996, f. & cert. ef. 12-27-96; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 19-2005, f. 12-21-05, cert. ef. 12-31-05

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Adm. Order No.: LOTT 20-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 10-1-05
Rules Amended: 177-040-0017
Rules Repealed: 177-040-0017(T)
Subject: The amendment removes the requirement that an applicant for a video lottery retailer contract establish the viability of the business by operating continuously for nine months prior to entering into a Lottery retailer contract.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0017
Additional Business Criteria Which May Be Grounds for Denial of a Video Lottery Application

(1) Placement of Video Lottery Terminals: Video lottery terminals shall not be placed in a business or at a premises:

(a) That has operated or will operate primarily as a grocery or convenience store. This subsection shall not apply to any existing video lottery retailer who the Director determines was not in accordance with this subsection as of October 14, 1993;

(b) That does not offer meals for on-premise consumption or alcoholic beverages for on-premise consumption as its primary business; except in those cases where the primary business, as determined in subsection (b) of this section, is recreation or entertainment where food and alcoholic beverages for on-premise consumption are offered in a dining or lounge area as an integral feature of the business. Examples include, but are not limited to, bowling centers, golf clubs, and hotels, with a dining or lounge area.

(c) Video lottery terminals shall not be placed in businesses such as laundromats, movie theaters, car dealerships, beauty salons, bed and breakfast lodging, hardware stores, dry goods stores, clothing stores, liquor stores, and other businesses not normally associated with the on-premise consumption of food and alcoholic beverages as its primary activity.

(2) Factors Considered: In determining the primary business, the Director may evaluate a combination of the following factors including, but not limited to: the history of the business; internal and external appearance; total square footage of the applicant's premises; the amount of space allocated for the consumption of food or alcoholic beverages; sales and other financial records; availability of seating for food and alcoholic beverage consumption; inventory; the proportion of the location's net income that results from the sale of food, beverages, goods, services and other sources of revenue; and how the business has been advertised and promoted.

(3) Director's Determination: The Director's determination of the retailer's primary business shall be final.

(4) Grocery Store: For purposes of this rule, a grocery store means a retail business at which food and foodstuffs are regularly and customarily sold in a bona fide manner for consumption off the premises, and shall include supermarkets and one-stop shopping centers which contain a grocery section in addition to offering other wares, goods and services.

(5) Convenience Store: For purposes of this rule, a convenience store means a retail business which offers a relatively limited line of high-volume grocery and beverage products and the majority of the products are for consumption off the premises.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 9-2005(Temp), f. & cert. ef. 9-7-05 thru 3-5-06; LOTT 20-2005, f. 12-21-05, cert. ef. 12-31-05

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Adm. Order No.: LOTT 21-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 9-1-05
Rules Amended: 177-040-0029
Subject: This rule amends OAR 177-040-0029 to specify that if the reduced compensation rates set forth in the rule become effective, the effective date for the rate decrease does not begin until after the Commission has completed the required determination. The current rule makes the effective date of the rate decrease retroactive to July 1, 2007.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0029
Review of Compensation Rates for Video Lottery Retailers Offering Video Poker Games and Video Line Games

(1) General: The Lottery Commission finds that the adoption of the compensation rates set forth in OAR 177-040-0028(2) is based on a projected video lottery game share sales target of $700,000,000 for the period June 25, 2006 to June 30, 2007 (Business Year '07.) This is a growth increase of 22% from actual sales of video lottery game shares for the period June 27, 2004 to June 25, 2005 (Business Year '05.) This projection includes the sales of video line game shares which have never been offered by the Oregon Lottery. The purpose of this rule is to establish a process for a review of the retailer compensation rates set forth in OAR 177-040-0028(2) on or after July 1, 2007.

(2) Review: On or after July 1, 2007, the Lottery shall determine the actual sales of all video lottery game shares from the period June 25, 2006 to June 30, 2007 (Business Year '07.) If the actual sales are less than $595,000,000, the Lottery Commission will conduct a review of the compensation rates set forth in OAR 177-040-0028(2), and may increase those compensation rates. If the actual sales exceed $805,000,000, and the Commission determines that the sales increase is not primarily due to an increase in the number of video lottery retailers, the following compensation rates will replace the compensation rates specified in OAR 177-040-0028(2) and will be effective beginning no sooner than the start of the third business week following the Commission's determination that the sales increase is not primarily due to an increase in the number of video lottery retailers:

(a) 4-Tier Option: [Table not included. See ED. NOTE.]

(b) 3-Tier Option: [Table not included. See ED. NOTE.]

(3) Determination of Actual Sales Growth: The Commission shall only consider the actual sales growth as determined by the Lottery for purposes of section (2) of this rule. The Lottery's determination is final.

(4) Commission Authority: The review process set forth in subsection (2) of this rule is not intended to limit in any way the authority of the Lottery Commission to review or adopt compensation rates for the sale of Lottery game tickets or shares at any time deemed necessary by the Lottery Commission.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.310, 461.445
Hist.: LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05; LOTT 21-2005, f. 12-21-05, cert. ef. 12-31-05

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Adm. Order No.: LOTT 22-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 12-1-05
Rules Amended: 177-040-0010, 177-040-0105
Subject: The amendments create additional grounds for denial of a Lottery retailer contract, and clarify the requirements for moving an existing Lottery retailer business to new premises.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0010
Personal Criteria Which May Be Grounds for Denial

(1) Before approving an application, the Director shall consider whether:

(a) The applicant is a person of good character, honesty, and integrity.

(b) The applicant is a person whose background, including criminal, civil, and financial records, and reputation do not jeopardize the public interest of the state or the security or integrity of the Lottery.

(c) The applicant associates with persons who have direct or indirect involvement in the applicant's business who do not jeopardize the public interest of the state or the fairness, honesty, integrity, or security of the Lottery. The Director may also consider whether the applicant associates with persons who have no involvement in the applicant's business when the applicant's association with such persons will create a real or perceived conflict with the Lottery's security or integrity interests.

(d) The applicant is a person whose experience, character, or general fitness is such that approving the applicant would be consistent with the public interest, convenience, and trust in keeping with the sensitive nature of the Lottery.

(e) The applicant demonstrates responsibility and integrity in financial transactions, and the applicant is creditworthy and is currently in a satisfactory financial condition. The Lottery may use the services of a commercial credit reporting agency in order to evaluate the applicant's creditworthiness, financial responsibility, and financial condition. The application may also be denied if the applicant has outstanding judgments, collections, liens, or is not in compliance with all state, federal, or local tax laws.

(f) The applicant has omitted any material facts or has provided any material misstatement or any untrue statement of material facts.

(g) The applicant's history with the Oregon Liquor Control Commission and state and local law enforcement shows that the applicant poses a threat to the security and integrity of the Lottery based on any significant and material compliance or adjudicated violation history, or compliance history with the Lottery.

(2) The person applying to be a retailer must:

(a) Adequately demonstrate, either individually or through the person's employees, the business ability and experience necessary to successfully establish, operate, and maintain the business for which application is made.

(b) Demonstrate adequate funding and ongoing business income that is sufficient to open, maintain, and operate the business as proposed by the applicant. The Director shall consider whether funding is from a source that may pose a threat to the integrity, security, honesty, or fairness of the Lottery.

(3) The Director shall consider the criminal history or conduct of the applicant in accordance with the following guidelines:

(a) The Director may deny an application when the applicant has any felony conviction more than 10 years old on the date the Lottery accepts the application.

(b) The Director may deny an application when the applicant has a conviction more than 15 years old on the date the Lottery accepts the application for violating any state, federal, or local gambling laws, or for felony possession of a controlled substance, or any crime involving the manufacture, sale, or delivery of a controlled substance. The Director may also deny an application if the applicant has ever engaged in conduct which violates ORS 91.240.

(c) The Director may deny an application when the Director has reasonably reliable information that the applicant has engaged in conduct which constitutes a violation of any gambling law or any law which defines a felony or misdemeanor.

(d) The Director may deny an application when the applicant has been held responsible, by judgment, settlement, consent decree or otherwise, in any court proceeding, or proceeding before an administrative body which was based in whole or in part on allegations of misleading or dishonest conduct including, but not limited to, fraud, deceit, misrepresentation, embezzlement, breach of fiduciary responsibility, or the Director has reasonably reliable information that the applicant has engaged in such conduct.

(e) The Director may deny an application when the applicant has been convicted of, or otherwise subject to official sanction for, any offense other than an offense described in sections (6) and (7) of this rule, except traffic infractions unless the applicant has engaged in conduct which demonstrates the applicant's habitual disregard for the law. The Director may also deny an application when the Director has reasonably reliable information that

the applicant has engaged in conduct which constitutes an offense as described under this subsection.

(4) In addition to sections (1), (2), and (3) of this rule, the Director may also deny an application when the applicant:

(a) Has an association with persons or businesses of known criminal background that may jeopardize the integrity, security, honesty, fairness, or reputation of the Lottery; or

(b) Is qualified, but there is an ownership interest in the applicant's business or premises by a person who is unqualified to hold a Lottery contract based on the requirements of OAR 177-040-0010 or any retailer contract, regardless of the qualifications of the applicant;

(c) Has been denied any type of gaming license, gaming permit, or gaming contract in any state or jurisdiction for a reason(s) that in the judgment of the Director would jeopardize the security, integrity, honesty, and fairness of the Lottery;

(d) Has had any type of gaming license, gaming permit, or gaming contract canceled, suspended, or revoked in any state or jurisdiction for a reason(s) that in the judgment of the Director would jeopardize the security, integrity, honesty, and fairness of the Lottery; or

(e) Has had any type of gaming contract terminated in any state or jurisdiction for a reason that in the judgment of the Director would jeopardize the security, integrity, honesty, and fairness of the Lottery.

(5) In evaluating whether to deny an application based on sections (1) through (4) of this rule, the Director may consider the following mitigating factors:

(a) The nature and severity of the conduct, incident, or circumstance;

(b) The passage of time since the conduct, incident, or circumstance;

(c) Any intervening factors since the conduct, incident, or circumstance;

(d) The number of offenses, crimes, or incidents;

(e) The relevance of the conduct, incident, or circumstance to the performance of duties under the Lottery contract; or

(f) Any extenuating circumstances.

(6) The Director shall deny an application when the applicant, within 15 years of the date the Lottery accepts the application, has been convicted of violating any federal, state, or local gambling laws, other than ORS 91.240, or when the applicant has been convicted of any felony possession of a controlled substance or any crime involving the manufacture, sale or delivery of a controlled substance.

(7) The Director shall deny an application when the applicant has been convicted within 10 years of the date the Lottery accepts the application of any felony.

(8) The Director shall deny an application when the applicant owns, manufactures, possesses, operates, has interest in or gains income or reimbursement from, any unlawful gambling device in any jurisdiction unless the device is approved and certified by another state lottery or federal, state, or local gaming control agency, and such ownership, manufacture, possession, operation, or income is disclosed to and approved by the Lottery.

(9) Except for subsection (3)(b) and section (6) of this rule, the criteria described in sections (1) through (8) of this rule are also criteria that apply to an existing retailer contract and may provide grounds for the Director to terminate a retailer contract.

(10) The denial by the Director of an application is final.

(11) If an application is denied by the Director, an applicant, or an applicant that is similar to the previously denied applicant, shall wait one year from the date of denial to reapply to become a Lottery retailer. In the Director's sole discretion, the Director may waive this requirement based on a showing of good cause by the applicant.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461
Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 17-2001(Temp), f.& cert. ef. 12-20-01 thru 6-7-02; LOTT 4-2002, f. & cert. ef. 3-25-02; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02; LOTT 22-2005, f. 12-21-05, cert. ef. 12-31-05

177-040-0105
Change Location

(1) Any time a Lottery retailer moves its existing business to new premises, the retailer must receive approval from the Lottery before moving the sale of Lottery tickets or shares to the new location.

(2) For a change in location to be approved, the new premises must meet all requirements necessary for operation as a Lottery retailer.

(3) If the Lottery retailer is changing the nature of the business, the Director may terminate the existing retailer contract and require the retailer to apply for a new retailer contract.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02; LOTT 22-2005, f. 12-21-05, cert. ef. 12-31-05

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Adm. Order No.: LOTT 23-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 9-1-05
Rules Amended: 177-085-0005, 177-085-0015, 177-085-0020, 177-085-0025, 177-085-0030, 177-085-0035, 177-085-0065
Rules Repealed: 177-085-0005(T), 177-085-0015(T), 177-085-0020(T), 177-085-0025(T), 177-085-0030(T), 177-085-0035(T), 177-085-0065(T)
Subject: In accordance with game changes promulgated by the Multi-State Lottery Association, the Powerball game rules have been updated with a new matrix and Power Play numbers which modify the odds of winning and the size of the jackpots. Annuitized payments will be paid in graduated payments (increasing each year).
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-085-0005
Definitions

The following definitions apply unless the context requires a different meaning.

(1) "Drawing" means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

(2) "Game Board" or "Boards" means that area of the play slip which contains two sets of numbered squares to be marked by the player, the first set containing fifty-five squares, numbered 1 through 55, and the second set containing forty-two squares, numbered 1 through 42.

(3) "Game Ticket" or "Ticket" means a ticket produced by a terminal which contains the caption Powerball, one or more lettered game plays followed by the drawing date, the price of the ticket, a six digit retailer number and a serial number that is compatible with the Lottery's on-line operating system.

(4) "Lottery" means the Oregon State Lottery.

(5) "Match 5 Bonus Prize" means the bonus money won when a Grand Prize has reached a new high level and bonus prize monies have been declared by the Product Group under these rules. The Match 5 Bonus Prize does not include the original amount declared for the Match 5 Prize. For the purposes of the Match 5 Bonus Prize, Match 5 means matching five of the numbers drawn from the first set containing fifty-five numbers.

(6) "MUSL" means the Multi-State Lottery Association

(7) "MUSL Board" means the governing body of the MUSL which is comprised of the chief executive officer of each Party Lottery.

(8) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that participates in the Multi-State Lottery (MUSL) and, in the context of these Powerball Product Group rules, which has joined in selling the Powerball game.

(9) "Play" means the six numbers, the first five from a field of fifty-five numbers and the last one from a field of forty-two numbers which appear on a ticket as a single lettered selection and are to be played by a player in the game.

(10) "Play Slip" or "Game Slip" means the paper used in marking a player's game plays and containing one or more boards.

(11) "Product Group" means a group of lotteries which has joined together to offer a product pursuant to the terms of the Multi-State Lottery Agreement and the Group's own rules.

(12) "Quick Pick" means the random selection by the computer system of two-digit numbers that appear on a ticket and are played by a player in the game.

(13) "Retailer" means a person or entity authorized by the Lottery to sell lottery tickets.

(14) "Set Prize" means all prizes except the Grand Prize that are advertised to be paid by a single lump sum payment and, except in instances outlined in these rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(15) "Winning Numbers" means the six numbers, the first five from a field of fifty-five numbers and the last one from a field of forty-two numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461.200
Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef.

11-2-97; LC 9-1997(Temp), f. & cert. ef. 11-7-97; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05

177-085-0015
Game Description

(1) Powerball is a five out of fifty-five numbers plus one out of forty-two numbers on-line lottery game, drawn every Wednesday and Saturday, which pays the Grand Prize, at the election of the player made in accordance with these rules or by a default election made in accordance with these rules, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total amount held for this prize pool on a pari-mutuel basis. Except as provided in the rules, all other prizes are paid on a set lump sum basis.

(2) To play Powerball, a player shall select five different numbers, between 1 and 55 and one additional number between 1 and 42, for input into a terminal. The additional number may be the same as one of the first five numbers selected by the player.

(3) Tickets can be purchased either from a terminal operated by a retailer (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated terminal). If purchased from a retailer, the player may select a set of five numbers and one additional number by marking six numbered squares in any one game board on a play slip and submitting the play slip to the retailer, or by requesting "Quick Pick" from the retailer. The retailer will then issue a ticket, via the terminal, containing the selected set or sets of numbers, each of which constitutes a game play. Tickets can be purchased from a player-activated terminal by use of a touch screen or by inserting a play slip into the machine. Tickets may be purchased for up to four consecutive drawings.

(4) It is the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. A ticket may not be voided or canceled by returning the ticket to the retailer or to the Lottery, including tickets that are printed in error. No ticket shall be returned to the Lottery for credit. The placing of plays is done at the player's own risk through the on-line retailer.

(5) The winning numbers for the Powerball game shall be determined at a drawing conducted under the supervision of the MUSL Board. The MUSL Board shall determine the frequency of Powerball game drawings. Winning numbers shall be selected at random with the aid of mechanical drawing equipment. The Lottery Director shall designate a Drawing Manager who shall review and randomly observe the drawings conducted by the MUSL Board.

Stat. Auth.: ORS 461.250 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.220
Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 6-1993, f. & cert. ef. 7-2-93; LC 1-1994, f. 1-27-94, cert. ef. 2-1-94; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05

177-085-0020
Prize Claims

A ticket, subject to the validation requirements set forth in these rules, is the only proof of a game play or plays and the submission of a winning ticket to the Lottery or an authorized retailer as required by these rules is the sole method of claiming a prize or prizes. A play slip or a copy of a ticket has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected. A terminal produced paper receipt has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250
Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05

177-085-0025
Prize Pool

(1) The prize pool for all prize categories shall consist of up to 49.3% of each drawing period's sales, including tax, that remain after funding the prize reserve accounts to the amounts established by the Product Group. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

(2) Two percent of sales, including tax, shall be placed in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Product Group. Once the prize reserve accounts exceed the designated amounts, the excess shall become part of the Grand Prize pool. Any amount remaining in a prize reserve account at the end of this game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the Product Group in accordance with state law.

(3) The Grand Prize shall be determined on a pari-mutuel basis. Except as provided in these rules, all other prizes awarded shall be paid as set lump sum prizes with the following expected prize payout percentages: [Table not included. See ED. NOTE.]

(a) The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards winning the Grand Prize.

(b) The prize pool percentage allocated to the set prizes (the single lump sum prizes of $200,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of the set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:

(A) The amount allocated to the set prizes and carried forward from previous draws, if any;

(B) An amount from the set Prize Reserve Account, if available, not to exceed $25,000,000.00 per drawing.

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages.

(d) The prize money allocated to the Match 5 Bonus Prize shall be divided equally by the number of game plays winning the Match 5 prize when a game play wins the new high jackpot amount.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stat. Implemented: ORS 461.220
Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 17-1988(Temp), f. & cert. ef. 6-2-88; LC 18-1988, f. & cert. ef. 6-28-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 4-1993, f. & cert ef. 4-2-93; LC 11-1995, f. 10-30-95, cert. ef. 11-1-95; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05

177-085-0030
Probability of Winning

The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in Powerball: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.220
Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05

177-085-0035
Prize Payment

(1) Grand prizes shall be paid, at the election of the player made no later than 60 days after validation of the prize, with either a per winner annuity or single lump sum payment. If the payment election is not made by the player within 60 days after validation, then the prize shall be paid as an annuity prize. The election to take the single lump sum payment may be made at the time of validation of the prize claim or within 60 days thereafter. An election made after validation is final and cannot be revoked, withdrawn or otherwise changed. Shares of the Grand Prize shall be determined by dividing the amount available in the Grand Prize pool equally among all winners of the Grand Prize. Winner(s) who elect a lump sum payment shall be paid their share(s) in a single lump sum payment. The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize pool by the MUSL annuity factor. (Application of the MUSL annuity factor generally is anticipated to result in the Grand Prize winner who elects a single lump sum payment receiving an amount that roughly approximates one-half of the advertised jackpot amount. The actual single lump sum payment amount will vary as a function of the MUSL annuity factor determined as described in subsection (5) of this rule.) The MUSL annuity factor is determined by the best total securities price obtained through a competitive bid of qualified, pre-approved brokers

made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the winner becomes entitled to the prize. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to subsection (5) of this rule. If individual shares of the cash held to fund an annuity are less than $250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the amount held in the Grand Prize pool. All annuitized prizes shall be paid annually in thirty payments with the initial payment being made directly with available funds, to be followed by twenty-nine payments funded by the annuity. All annuitized prizes shall be paid annually in thirty graduated payments (increasing each year) by a rate as determined by the Product Group. Prize payments may be rounded down to the nearest $1,000. Annual payments after the initial payment shall be made by the lottery on the anniversary date of the first payment or if such date falls on a non-business day, then the first business day following the anniversary date of the selection of the jackpot winning numbers. Funds for the initial payment of an annuitized prize or the lump sum payment prize shall be made available by MUSL for payment by the Party Lottery which sold the winning ticket by the 15th calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of sufficient funds in the prize pool trust to pay the prize, then the transfer of funds for the payment of the full lump sum payment amount may be delayed pending receipt of funds from the party lotteries. A state may elect to make the initial payment from its own funds after validation, with notice to MUSL. In the event of the death of a lottery winner during the annuity payment period, the Product Group, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") or the persons identified on the winner's Beneficiary Designation form (BDF), whichever is applicable, to the state lottery of the state in which the deceased lottery winner purchased the winning ticket, and subject to applicable federal, state, or district laws, may make payment to the Estate or the designated beneficiary of the discounted present value of the annuitized prize payments. If the Product Group makes such a determination, then securities and/or amounts held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate or the persons on the BDF. The identification of the securities, if any, to fund the annuitized prize shall be at the sole discretion of the Product Group.

(2) All low-tier cash prizes (all prizes except the Grand Prize) shall be paid directly through the Lottery that sold the winning ticket. The Lottery may begin paying low-tier prizes after receiving authorization to pay from the MUSL central office.

(3) Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first payment to the winner or winners. Prizes other than the Grand Prize which, under these rules, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

(4) If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize pool for the following drawing. If a new high Grand Prize is not won in a drawing, the prize money allocated for the Match 5 Bonus Prizes shall roll over and be added to the Match 5 Bonus Prize pool for the following drawing.

(5) The Product Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the Product Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand prize amount between drawings is offered by the Product Group, then the Grand Prize amount shall be determined as follows. If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners. If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize. If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of the cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes. In no case shall quotes be used which are more than two weeks old, and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in these rules. Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in OAR 177-085-0025(3)(b) or (c) becomes necessary.

(6) The holder of a winning ticket may win only one prize per board in connection with the winning numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(7) Claims for all prize categories, including the Grand Prize, shall be submitted within one year after the date of the drawing in accordance with these rules.

(8) When the Grand Prize reaches a new high annuitized amount, through a procedure as determined by the Group, the maximum amount to be allocated to the Grand Prize pool from the Grand Prize percentage shall be the previous high amount plus $25 million (annuitized) or as otherwise set by the Group. Any amount of the Grand Prize percentage which exceeds the $25 million (annuitized) increase shall be added to the Match 5 Bonus Prize Pool. The Match 5 Bonus prize pool is hereby created, and shall accumulate until the Grand Prize is won, at which time the Match 5 Bonus prize pool shall be divided equally by the number of game boards winning the Match 5 prize. If there are no Match 5 winners on the draw when the new high Grand Prize is won, then the Match 5 Bonus prize pool shall be divided equally by the number of game plays winning the Match 4+1 prize.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461.20
Hist.: LC 6-1988(Temp), f. & cert. ef. 1-26-88; LC 9-1988, f. & cert. ef. 2-23-88; LC 3-1989(Temp), f. & cert. ef. 1-23-89; LC 6-1989, f. 2-28-89, cert. ef. 3-2-89; LC 1-1992, f. 2-25-92, cert. ef. 4-19-92; LC 8-1992, f. & cert. ef. 7-23-92; LC 4-1993, f. & cert. ef. 4-2-93; LC 10-1996, f. & cert. ef. 9-4-96; LC 7-1997, f. 10-30-97, cert. ef. 11-2-97; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 4-2003(Temp), f. & cert. ef. 4-15-03 thru 10-10-03; LOTT 10-2003, f. & cert. ef. 6-30-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05

177-085-0065
Power Play

(1) Power Play is an optional, limited extension of the Powerball Game described in OAR Division 85. The Lottery Director, in the Lottery Director's sole discretion and based on agreements with MUSL, is authorized to initiate and terminate the Power Play option.

(2) Power Play multiplies the amount of any of the cash Set Prizes (the cash prizes normally paying $3 to $200,000) won in a drawing. The Grand Prize jackpot is not a Set Prize and will not be multiplied. Match 5 Bonus Prizes are awarded independent of the Power Play option and are not multiplied by the Power Play multiplier.

(3) A qualifying Power Play option play is any single Powerball Play for which the player selects the Power Play option on either the Play Slip or by selecting the Power Play option through a clerk-activated or player-activated terminal, pays one extra dollar for the Power Play option play, and which is recorded at the Party Lottery's central computer as a qualifying play.

(4) A qualifying play which wins one of the cash Set Prizes will be multiplied by the number selected (2 through 5), in a separate random selection announced during the official Powerball drawing show.

(5) MUSL will conduct a separate random "Power Play" drawing and announce results during each of the regular Powerball drawings. During each random "Power Play" drawing, one number from sixteen possible numbers will be selected. The numbers available for selection are 2, 2, 2, 2, 3, 3, 3, 3, 4, 4, 4, 4, 5, 5, 5, and 5. The Powerball Group may change one or more of these multiplier numbers for special promotions from time to time.

(6) Except as provided in these rules, all prizes awarded shall be paid as lump sum set prizes. Instead of the Powerball set prize amounts, qualifying Power Play option plays will pay the amounts shown below when matched with the Power Play number drawn: [Table not included. See ED. NOTE.]

(7) The following table sets forth the probability of the various Power Play numbers being drawn during a single Powerball drawing: [Table not included. See ED. NOTE.]

(8) The prize pool percentage allocated to the Power Play set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(9) If the total of the original Powerball set prizes and the multiplied Power Play set prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the set prizes (including the multiplied set prizes) awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the set prizes and carried forward from previous draws, if any;

(b) An amount from the Powerball Set-Prize Reserve Account, if available in the account, not to exceed twenty-five million dollars ($25,000,000) per drawing; and

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded (including multiplied prizes), then the highest set prize (including the multiplied prizes) shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize, including the multiplied prize, shall become a pari-mutuel prize. This procedure shall continue down through all set prizes levels, if necessary, until all set prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461
Hist.: LOTT 3-2001(Temp), f. 3-1-01, cert. ef 3-2-01 thru 8-29-01; LOTT 10-2001, f. 5-25-01, cert. ef. 5-29-01; LOTT 9-2002(Temp), f. 9-4-02, cert. ef. 10-6-02 thru 3-31-03; LOTT 1-2003, f. & cert. ef. 2-3-03; LOTT 7-2005(Temp), f. 8-8-05, cert. ef. 8-28-05 thru 2-23-06; LOTT 23-2005, f. 12-21-05, cert. ef. 12-31-05

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Oregon State Marine Board
Chapter 250

Adm. Order No.: OSMB 6-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 12-1-05
Rules Adopted: 250-016-0012
Subject: SB 579 (2005 Legislative Session) requires outfitters and guides who carry passengers in Class III and higher whitewater to have the guides and passengers wear an approved personal flotation device (PFD) while operating in Class III or higher rapids. The law requires the Marine Board to adopt, by rule, the TYPE of Coast Guard approved PFD to be used. The Board on December 14 approved the use of U.S. Coast Guard Approved TYPE I, III or V PFD that is suitable for use in whitewater (not restricted in its approval). Inflatable PFDs are not approved for whitewater use.
Rules Coordinator: Jill E. Andrick—(503) 378-2617

250-016-0012
Personal Flotation Device Requirements for Outfitters and Guides

(1) Registered outfitters and guides who carry passengers for consideration on rivers rated as Class III or higher on a commonly accepted scale of river difficulty are required to have all employees and passengers wear a properly secured personal flotation device on those sections of river that are rated Class III or higher.

(2) The personal flotation devices used by outfitters and guides must:

(a) Be approved by the U.S. Coast Guard as a Type I, III, or V personal flotation device that is suitable for use on whitewater rivers.

(b) Not have a limitation or restriction on its approval that would prevent its use on whitewater rivers.

(c) Not be an inflatable personal flotation device, regardless of rating type.

Stat. Auth.: ORS 704, 830.110
Stats. Implemented:
Hist.: OSMB 6-2005, f. 12-29-05, cert. ef. 1-1-06

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Oregon University System, Oregon State University
Chapter 576

Adm. Order No.: OSU 2-2005
Filed with Sec. of State: 12-16-2005
Certified to be Effective: 12-16-05
Notice Publication Date: 11-1-05
Rules Amended: 576-045-0020
Subject: Under OSU's current rules, animals are not permitted within university owned or controlled buildings, with limited exceptions. The rule will provide that professional and teaching faculty assigned to live on campus may have a pet in their residence if approved in advance under health and safety criteria adopted by University Housing and Dining Services.
Rules Coordinator: Bonnie Dasenko—(541) 737-2474

576-045-0020
Regulation

(1) The City of Corvallis animal control ordinance, Corvallis Municipal Code 5.03.050, together with any adopted amendments, is applicable and enforceable on university owned and controlled property within the City.

(2) No person shall bring an animal onto university owned or controlled property and leave it unattended for any length of time.

(3) No person shall attach any animal by the use of any leash or other device to any tree, pole, fence, sign, building, fire hydrant, vehicle or other object on university owned or controlled property.

(4) No person shall confine or attach an animal within or to a motor vehicle either leashed, tied or loose in such a way that the animal can extend beyond that vehicle.

(5) Animals are not allowed on university owned or controlled property unless on a leash and under the control of a person capable of controlling the animal.

(6) No person shall bring an animal onto university owned or controlled property unless it has a current license.

(7) Animals are not permitted in university owned or controlled buildings.

(8) Exceptions:

(a) Assistance animals trained to assist a physically impaired person in one or more daily life activities, including but not limited to Guide Dogs for the Blind, Companion Dogs for the Deaf, Canine Companions for Independence (including those dogs in training), or those associated with a comparable nationally recognized organization;

(b) Animals under guidance and control of university staff for the purpose of research or other academic endeavors.

(c) Pets of professional and teaching faculty who live in residential facilities operated by University Housing and Dining Services (UHDS), when authorized in advance by UHDS under criteria established by UHDS. Such criteria shall address health and safety concerns and the suitability of the animal for living in a residence hall setting.

Stat.. Auth.: ORS 346.685 & 351.070
Stats. Implemented: ORS 346.685 & 351.070
Hist.: OSU 7-1995, f. & cert. ef. 12-13-95; OSU 7-1997, f. & cert. ef. 6-16-97; OSU 2-2005, f. & cert. ef. 12-16-05

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Adm. Order No.: OSU 3-2005
Filed with Sec. of State: 12-16-2005
Certified to be Effective: 12-16-05
Notice Publication Date: 11-1-05
Rules Amended: 576-050-0025
Subject: The rule will amend Oregon State University's faculty grievance procedures to allow a faculty member with a complaint of discrimination to waive his or her right to file a formal grievance under the rules and instead file a formal complaint in OSU's Office of Affirmative Action and Equal Opportunity.
Rules Coordinator: Bonnie Dasenko—(541) 737-2474

576-050-0025
Initiation of Formal Procedures

(1) If a grievance is not resolved to the satisfaction of the grievant at the informal stage, or if the grievant chooses to bypass the informal stage, the grievant may file a formal written grievance. A grievance shall be filed with the dean, director, or executive officer in charge of the administrative unit, except:

(a) Where the grievant is a department chair in which case the grievance shall be filed with the Provost and Executive Vice President; or

(b) Where the grievant alleges sexual harassment against the person in charge of the administrative unit, in which case the grievance shall be filed with the next higher administrator.

(2) The grievant shall file a copy of the written grievance with the Legal Advisor in the Office of the President. The formal grievance must be filed within sixty (60) days of the time the faculty member knew or by reasonable diligence should have known of the acts which gave rise to the grievance. Therefore, discussion or mediation at the informal stage should be initiated as soon as possible. The University shall extend the sixty (60) day filing requirement if the grievant is pursuing the complaint at the informal level and it appears that additional time would be beneficial in resolving the grievance. Extension by the University shall be in writing by the Legal Advisor.

(3) The written grievance must contain the grievant's name and address, the date and nature of the act or omission which gave rise to the grievance, any rule, policy or procedure alleged to have been violated or misapplied, and the remedy requested by the grievant.

(4) The dean, director, unit executive officer, or the respective designee shall send a written decision to the grievant within twenty (20) days of receipt of the grievance.

(5) If the sole basis of the grievance is a claim of an unlawful discriminatory employment practice or practices, the grievant may waive in writing the right to file a formal grievance under this rule and may elect instead to file a formal complaint of discrimination with the Office of Affirmative Action and Equal Opportunity. If the grievant elects to file with the Office of Affirmative Action and Equal Opportunity, the grievant shall be entitled to that office's procedures and shall have no further rights to the procedures set forth in this Division 50.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: OSU 1-1988, f. 5-16-88, cert. ef. 6-1-88; OSU 11-1996, f. & cert. ef. 8-23-96; OSU 3-2005, f. & cert. ef. 12-16-05

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Physical Therapist Licensing Board
Chapter 848

Adm. Order No.: PTLB 2-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 848-001-0000
Subject: Add to Interested Persons List for notification of proposed rule making.
Rules Coordinator: James Heider—(971) 673-0203

848-001-0000
Notice to Interested Persons on Any Proposal to Adopt, Amend, or Repeal Any Rule

Prior to the adoption, amendment, or repeal of any permanent rule, the Physical Therapist Licensing Board shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least fifteen (15) days prior to the effective date.

(2) By providing a copy of the notice to persons on the Physical Therapist Licensing Board's mailing list established pursuant to ORS 183.335(8).

(3) By providing a copy of the notice to the following persons, organizations, or publications:

(a) Executive Secretary, Oregon Physical Therapy Association;

(b) Oregon Association of Hospitals.

(c) Oregon Physical Therapists in Independent Practice.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 688.145 & 688.160
Hist.: PT 8, f. & ef. 5-4-76; PTLB 1-2004, f. & cert. ef. 12-29-04; PTLB 2-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: PTLB 3-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 848-005-0020, 848-005-0030
Subject: • Proposed increase in PT annual renewal fee.
• Proposed increase in PTA annual renewal fee.
• Repeal of fees associated with the renewal of a practice without referral certification.
• Update rules to include the need for Licensee to submit current electronic mailing address, if available, to the Board.
Rules Coordinator: James Heider—(971) 673-0203

848-005-0020
Board Fees and Refunds

(1) The following fees shall be paid to the Board:

(a) Physical Therapist or Physical Therapist Assistant Examination Application Fee of $150.00, plus the actual cost to the Board of conducting a nationwide background check.

(b) Physical Therapist or Physical Therapist Assistant Endorsement Application Fee of $150.00, plus the actual cost to the Board of conducting a nationwide background check.

(c) Physical Therapist Annual License Renewal Fee of $100.00, plus the actual cost to the Board of conducting a statewide law enforcement background check.

(d) Physical Therapist Assistant Annual License Renewal Fee of $65.00, plus the actual cost to the Board of conducting a statewide law enforcement background check.

(e) Lapsed License Renewal Fee of $50.00 for renewal applications postmarked or received by the Board after March 31st.

(f) Physical Therapist or Physical Therapist Assistant Temporary Permits Fee of $50.00.

(g) Duplicate License Fee of $25.00.

(h) Physical Therapist or Physical Therapist Assistant Wall Certificate Fee of $15.00.

(i) Physical Therapist or Physical Therapist Assistant Verification of Oregon Licensure Letters/Forms Fee of $25.00.

(j) Non-Sufficient Funds (NSF) Check Fee of $25.00.

(k) Miscellaneous Fees:

(A) Physical Therapist and/or Physical Therapist Assistant electronic mailing list fee of $150.00.

(B) Photocopying Fee of ten cents ($0.10) per copy.

(2) Board refunds of overpayments in any amount less than $25.00 will be held by the Board unless the payor requests a refund in writing.

Stat. Auth.: ORS 182.466(4)
Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110
Hist.: PT 6-1996, f. & cert. ef. 9-5-96; PT 3-1997, f. & cert. ef. 6-9-97; PLTB 1-1998, f. & cert. ef. 2-9-98; PTLB 6-1999, f. 11-23-99, cert. ef. 1-1-00; PTLB 4-2000, f. & cert. ef. 12-21-00; Renumbered from 848-010-0110, PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 3-2005, f. 12-29-05, cert. ef. 1-1-06

848-005-0030
Name, Address and Telephone Number of Record

(1) Every applicant, licensee and temporary permit holder shall keep their legal name on file with the Board.

(2) Every applicant, licensee and temporary permit holder shall keep their home address on file with the Board. The home address must be a residential address and may not be a post office box number.

(3) Every applicant, licensee and temporary permit holder shall keep a current contact telephone number and electronic mail address, if available, on file with the Board.

(4) Every applicant, licensee and temporary permit holder shall keep the name, address and telephone number of their current employer or place of business on file with the Board.

(5) Every applicant, licensee and temporary permit holder shall keep a current designated mailing address on file with the Board.

(6) Whenever an applicant, licensee or temporary permit holder legally changes their name, they shall notify the Board in writing within 30 days of the name change and provide the Board with legal documentation of the name change.

(7) Whenever an applicant, licensee or temporary permit holder changes their home address, their employer or place of business, their contact telephone number, electronic mail address or their mailing address, they shall within 30 days, notify the Board in writing. Written notification may be by regular mail, electronic mail or facsimile.

Stat. Auth.: ORS 182.466(4)
Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110
Hist.: PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 3-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: PTLB 4-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 848-010-0015, 848-010-0020, 848-010-0026, 848-010-0033, 848-010-0035, 848-010-0044
Subject: • Update rule language to incorporate the new scores for the new Internet Based Test of English as a Foreign Language (ibTOEFL).
• If a foreign trained applicant ever held a license in the country in which they received their education, they must provide primary source verification of that license to the Board.
• Added a competency statement for renewal of a lapsed license.
• Remove the requirement for an application to be made under oath or affirmation.
Rules Coordinator: James Heider—(971) 673-0203

848-010-0015
Examinations

(1) Examinations for licensing of physical therapists and of physical therapist assistants shall be provided by an examination service approved by the Board. The overall passing score shall be based on a formula using the criterion-referenced scoring system. An applicant may sit for the examination a maximum of three times in any jurisdiction within a 12-month period, measured from the date of the first examination. Prior to a fourth attempt, the applicant must take and complete a refresher course approved

by the Board. Applicant may test two times in any jurisdiction following completion of the refresher course. If applicant fails to pass the examination within two attempts following completion of the refresher course, applicant may not be licensed in Oregon.

(2) All completed applications for examination, the non-refundable examination fee and other necessary forms must be approved by the Board prior to the scheduling of each examination in Oregon. For applicants taking the examination in another state or territory of the United States, or other Board approved location, and applying to Oregon for licensure by examination, all completed applications, the non-refundable fee and other necessary forms must be approved by the Board prior to licensure.

(3) All foreign educated physical therapists must submit directly to the Board, prior to obtaining an application:

(a) A Credentials Evaluation Statement of professional training prepared by a Board-approved credentials evaluation agency. It is the applicant's responsibility to pay the expenses associated with the credentials evaluation. The minimum number of semester hour credits required is 120. The evaluation must include:

(A) General Education — A minimum of 54 semester credit hours shall be required in general education in the areas of humanities, physical science, biological science, social science, behavioral science, and mathematics. A minimum of a one-semester course must be successfully completed in each area of general education unless otherwise noted, or approved by the Board:

(i) Humanities — (English, English Composition, Speech or Oral Communication, Foreign Language (other than native language), Literature, Art, Music);

(ii) Physical Science — Chemistry with laboratory (two semester courses required), Physics with laboratory (two semester courses required);

(iii) Biological Science — (Biology, Anatomy, Physiology, Zoology, Kinesiology, Neuroscience, Genetics);

(iv) Social Science — (History, Geography, Sociology, Economics, Political Science);

(v) Behavioral Science (Psychology, Anthropology, Philosophy, Ethics);

(vi) Mathematics (Statistics, Algebra, Pre-Calculus, Calculus, Trigonometry and Geometry).

(B) Professional Education:

(i) A minimum of 69 semester credit hours encompassing Human Anatomy (specific to physical therapy), Human Physiology (specific to physical therapy), Neuroscience, Kinesiology or Functional Anatomy, Pathology, Neurology, Orthopedics, Pediatrics, Geriatrics, Cardiopulmonary, Pharmacology, Integumentary System Assessment and Interventions, Musculoskeletal System Assessment and Interventions, Neuromuscular System Assessment and Interventions, Cardiopulmonary System Assessment and Interventions. Additionally, course content is required in the following seven areas: Administration, Community Health, Research and Clinical Decision Making, Educational Techniques, Communication (related to client/patient care), Legal and Ethical Aspects of Physical Therapy Practice and Psychosocial Aspects in Physical Therapy Practice.

(ii) A minimum of two clinical affiliations of no less than 800 hours total, which may include hours obtained by completion of a Board approved clinical internship.

(b) English Language Proficiency:

(A) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(B) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than 4.5 on the Test of Written English (TWE); or

(C) Verification that the applicant has achieved the following minimum scores for each category of the new internet based TOEFL (ibTOEFL) examination: writing, 24; speaking, 26; reading, 18; listening, 21; with an overall score of not less than 89.

(c) If applicant has taken a Board-approved national licensing examination prior to application for licensure in Oregon, a report of applicant's examination scores must be submitted to the Board directly from the Board-approved examination service.

(d) If applicant holds or has held a license in the country in which the applicant received their physical therapy education, the applicant must provide primary source verification of the license.

(e) For purposes of section (3) of this rule, the requirements and criteria considered for credentialing will be "as of" the date the most recent credentialing report was received by the Board from the Board-approved credentialing agency.

(4) The Examination must be given in the English language.

(5) No person shall be allowed to take the physical therapist examination or physical therapist assistant examination for licensure in Oregon until all academic requirements are completed.

(6) The examination will be administered at a location approved by the Board. Applicants taking the examination in Oregon must sit for the examination within 60 days from the date of the letter of authorization from the Board-approved examination service.

(7) Any applicant who has graduated from an approved school of physical therapy and passed a Board-approved examination or a Board-approved equivalent examination more than five years prior to application for licensure in the State of Oregon and who has not been actively licensed in any other state or territory of the United States for a five year period shall be required to complete a refresher course approved by the Board and to pass an examination approved by the Board as provided in this rule.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.020, 688.040, 688.050, 688.055, 688.070 & 688.090
Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 6, f. 12-20-74, ef. 1-11-75; PT 10, f. & ef. 10-21-77; PT 11, f. & ef. 12-28-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990 (Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 2-1996, f. & cert. ef. 9-5-96; PT 1-1997, f. & cert. ef. 2-4-97; PTLB 4-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 1-2000, f. & cert. ef. 5-4-00; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06

848-010-0020
Endorsement of Out-of-State Physical Therapists and Physical Therapist Assistants

Physical therapists and physical therapist assistants not licensed in the State of Oregon may be licensed by endorsement if they comply with all of the following:

(1) File a completed application form and pay a non-refundable endorsement application fee.

(2) Are at least 18 years of age.

(3) Are graduates of an approved school for physical therapists or physical therapist assistants as provided in OAR 848-010-0010 and 848-010-0015(3).

(4) Are currently licensed in any other state or territory of the United States.

(5) The following shall be considered the minimum passing score on the physical therapist or the physical therapist assistant examination provided by a Board-approved examination service:

(a) For applicants examined February 1, 1996 and there after, the minimum overall passing score shall be based on a formula using the criterion-referenced scoring system verified by a Board-approved examination service;

(b) For applicants examined from January 5, 1983 through January 31, 1996, the minimum overall passing score shall be based on a formula using the national average raw score minus two standard errors of measurement verified by a Board-approved examination service;

(c) For applicants examined from January 1, 1976 through January 4, 1983, the minimum overall passing score shall be 1.5 standard deviation below the national average raw score verified by a Board-approved examination service;

(d) For applicants examined from January 1, 1961 through December 31, 1975, the passing of a written examination which in the opinion of the Board is substantially equivalent to the examination given by a Board-approved examination service;

(e) For applicants examined prior to January 1, 1961, the passing of an examination of the American Registry of Physical Therapists, or the passing of a written examination which in the opinion of the Board is substantially equivalent to the examination of the American Registry of Physical Therapists.

Stat. Auth: ORS 688.160
Stats. Implemented: ORS 688.080
Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 5, f. 12-20-74, ef. 1-11-75; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990(Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 3-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06

848-010-0026
Temporary Permits

(1) The Board may issue a temporary permit to practice as a physical therapist or physical therapist assistant for a period of three (3) months to an applicant who meets the requirements of this rule.

(a) A person who has completed a CAPTE accredited physical therapist or physical therapist assistant program in a state or territory of the United States and who is applying for the first time to take the licensing examination in Oregon shall:

(A) Submit a completed application for license by examination and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee; and

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program.

(b) A person who holds a valid current license to practice in another state or territory of the United States shall:

(A) Provide written primary source verification of current licensure in another state or territory;

(B) Submit a completed application for license by endorsement and pay the required fee;

(C) Submit a completed application for a temporary permit and pay the required fee; and

(D) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program.

(c) A person who is a foreign educated physical therapist who has graduated from a CAPTE accredited physical therapist program shall:

(A) Submit a completed application for license by examination or endorsement and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee;

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist program; and

(D) Submit proof of passing scores on the TOEFL, TSE and TWE tests or ibTOEFL test. However, this requirement does not apply if the physical therapist program was taught in English and English is the national language of the country where the physical therapist program was taught.

(2) A person who holds a temporary permit must practice under supervision as provided in this rule.

(3) A person who holds a temporary permit issued under subsection (1)(a) or (1)(c) of this rule must practice under on-site supervision, which means that at all times a supervising therapist is in the same building and immediately available for consultation. Entries made in the patient record by a temporary permit holder must be authenticated by the permit holder and by a supervising therapist.

(4) A person who holds a temporary permit issued under subsection (1)(b) of this rule must practice under general supervision, which means that at all times a supervising therapist must be readily available for consultation, either in person or by telecommunication.

(5) As used in this rule, "supervising therapist" means a physical therapist if the permit holder is a physical therapist or a physical therapist assistant. "Supervising therapist" also means a physical therapist assistant if the permit holder is a physical therapist assistant. A physical therapist assistant may not supervise a physical therapist permit holder.

(6) If a physical therapist assistant is supervising a physical therapist assistant permit holder, a physical therapist must be readily available for consultation, either in person or by telecommunication, as provided in OAR 848-015-0020.

(7) Within five (5) working days of beginning practice the permit holder must submit to the Board a completed "Temporary Permit Letter from Employer" form. The permit holder must notify the Board of any change in employment during the three month period by submitting a new "Temporary Permit Letter from Employer" within five (5) working days.

(8) A temporary permit issued under this rule shall terminate automatically by operation of law if the permit holder fails the Board-approved national licensing examination or the person's score on the Board-approved national licensing examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements. A permit holder must return the permit certificate to the Board immediately, by a method that provides delivery verification, upon notification that the permit has terminated.

(9) The Board may refuse to issue a temporary permit to an applicant or may revoke a permit after issuance on any of the grounds set out in OAR 848-010-0044 or 848-045-0020. A person whose permit is revoked must return the certificate to the Board immediately by a method that provides delivery verification.

(10) A permit holder whose permit has terminated or has been revoked is not eligible to apply for another permit.

(11) A person who has taken and failed the Board-approved national licensing examination is not eligible to apply for a temporary permit. A person who has failed and has not subsequently passed the national licensing examination in another state, or whose score on the examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements, is not eligible to apply for a temporary permit.

(12) In its discretion the Board may grant one three month extension to a person who holds a temporary permit issued under (1)(b) of this rule.

(13) A person who holds a temporary permit issued under this rule is subject to all statutes and rules governing a licensee.

Stat. Auth.: ORS 688.110
Stats. Implemented: ORS 688.110
Hist.: PTLB 3-2000, f. & cert. ef. 12-21-00; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06

848-010-0033
Yearly Renewal Of License Required

(1) All physical therapist and physical therapist assistant licenses expire on March 31 of each calendar year, regardless of the initial issue date. Physical therapists and physical therapist assistants must annually renew their licenses to practice effective April 1 of each year. A license is considered lapsed if a completed renewal application is postmarked or received after March 31. A person whose license has lapsed must immediately stop practicing as a physical therapist or a physical therapist assistant and shall not practice until the license is renewed.

(2) During the first week in January of each year the Board mails a renewal application to each currently licensed physical therapist and physical therapist assistant at the licensee's mailing address on file with the Board.

(3) If the completed license renewal application is postmarked or actually received by the Board after March 31, the licensee is subject to a lapsed license renewal fee as provided in OAR 848-005-0020(1)(e) in addition to the annual license renewal fee.

(4) A licensed physical therapist must complete the renewal application form furnished by the Board and pay the annual renewal fee provided in OAR 848-005-0020(1)(c).

(5) A licensed physical therapist assistant must complete the renewal application form furnished by the Board and pay the annual renewal fee provided in OAR 848-005-0020(1)(d).

Stat. Auth.: ORS 688.110
Stats. Implemented: ORS 688.110
Hist.: PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06

848-010-0035
Renewal of Lapsed Licenses

(1) Any license that is not renewed before April 1 of each year shall automatically lapse. No person whose license has lapsed shall practice until the license is renewed. Failure to receive a renewal notice shall not excuse any licensee from the requirements of renewal. The Board may renew any lapsed license upon payment of all past unpaid renewal and delinquent fees.

(2) In the event that an applicant's Oregon physical therapy license has lapsed for five or more consecutive years, the applicant must demonstrate competence to practice physical therapy. If the applicant fails to demonstrate competence, the Board may require the applicant to serve an internship under a restricted license or satisfactorily complete a refresher course approved by the Board, or both, at the discretion of the Board. The Board may also require the applicant to pass an examination approved by the Physical Therapist Licensing Board as provided in OAR 848-010-0015.

(3) If the applicant holds a current physical therapist or physical therapist assistant license in another state or jurisdiction and the applicant's Oregon license has lapsed for five or more consecutive years, the applicant may apply for a license by endorsement as provided in OAR 848-010-0020.

Stat. Auth: ORS 688.160
Stats. Implemented: ORS 688.100
Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 10, f. & ef. 10-21-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1989, f. & cert. ef. 8-8-89; PT 5-1996, f. & cert. ef. 9-5-96; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06

848-010-0044
Grounds for Refusal to License an Applicant

After notice and opportunity for hearing as provided in ORS 688.145, the Board may refuse to license, or may limit or restrict the license of an applicant who:

(1) Is not a person of good moral character as provided in OAR 848-045-0020(2)(i);

(2) Willfully made a false statement on the application;

(3) Failed to disclose requested information or provided false or materially misleading information on the application or during the process of applying for a license or temporary permit;

(4) Has practiced physical therapy without a license or has purported to be a therapist in violation of ORS 688.020;

(5) Has a mental, emotional or physical condition which impairs the applicant's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(6) Has an addiction to or a dependency on alcohol, legend drugs or controlled substances which impairs the applicant's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(7) Has been disciplined or had an application for licensure refused by another Oregon state licensing board or out-of-state licensing board for an act which if committed in Oregon would be grounds for discipline under ORS 688.140 or OAR 848-045-0020;

(8) Has been convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2); or

(9) Has been convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2).

Stat. Auth: ORS 688.160
Stats. Implemented: ORS 688.100
Hist.: PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: PTLB 5-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 848-015-0010, 848-015-0030
Subject: Housekeeping items only, reference updates due to amendments to other rules.
Rules Coordinator: James Heider—(971) 673-0203

848-015-0010
Definitions

(1) Under ORS 688.010(4), a physical therapist assistant is defined as a person who assists a physical therapist in the administration of physical therapy. The physical therapist assistant's function is to assist the physical therapist in patient-related activities and to perform delegated procedures that are commensurate with the physical therapist assistant's education, training, experience, and skill.

(2) "Supervising physical therapist" means either the last physical therapist to see the patient, or the physical therapist designated as in-charge of the clinic, department or facility on the day the patient is being treated.

Stat. Auth.: ORS 688.160 & 688.055
Stats. Implemented: ORS 688.020, 688.040, 688.055, 688.070, 688.080 & 688.090
Hist.: PTLB 3-2004, f. & cert. ef. 12-29-04; PTLB 5-2005, f. 12-29-05, cert. ef. 1-1-06

848-015-0030
Prohibited Acts

(1) A physical therapist assistant shall not:

(a) Perform an initial evaluation.

(b) Perform the required reassessment provided in OAR 848-040-0155. However, a physical therapist assistant may participate with the physical therapist in gathering data to be included in the required reassessment of a patient for whom the assistant has been providing treatment.

(c) Independently make modifications to the plan of care or objective goals. However, an assistant may collaborate with the physical therapist in making modifications or changes to the plan of care or goals based on the assistant's treatment of that patient and the patient's condition, progress or response to the treatment.

(d) Independently make the decision to discharge a patient from therapy. However, a physical therapist assistant may make recommendations regarding discharge to the supervising physical therapist based on the assistant's treatment of the patient.

(2) As provided in ORS 688.020(2), no person shall practice as a physical therapist assistant unless that person is licensed under ORS 688.090.

Stat. Auth.: ORS 688.160 & 688.055
Stats. Implemented: ORS 688.020, 688.040, 688.055, 688.070, 688.080 & 688.090
Hist.: PTLB 3-2004, f. & cert. ef. 12-29-04; PTLB 5-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: PTLB 6-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 848-020-0030, 848-020-0060
Subject: • Update wording in prohibited treatment related tasks regarding an Aides role in assisting with iontophoresis.

• Update wording in prohibited treatment related tasks regarding an Aides role in assisting with phonophoresis.

• Update wording in prohibited treatment related tasks regarding an Aides role in assisting with soft tissue mobilization or massage.

Rules Coordinator: James Heider—(971) 673-0203

848-020-0030
Supervision; Delegation of Supervision; Professional Responsibility of Supervisors and Supervisees

(1) The physical therapist shall supervise the physical therapist aide in each treatment task and each non-treatment, patient-related task assigned to the aide. The supervising physical therapist may delegate to a physical therapist assistant supervision of the aide.

(2) A physical therapist aide shall not perform a treatment-related task or a non-treatment, patient-related task except under the supervision of a physical therapist or physical therapist assistant.

(3) A physical therapist may supervise directly and indirectly through a physical therapist assistant a maximum total of two physical therapist aides, when the aides are performing treatment-related tasks. In addition, a physical therapist may supervise directly and indirectly through a physical therapist assistant additional aides who are not performing treatment related tasks.

(4) Use of an aide to perform tasks as allowed by this rule shall not constitute a violation of OAR 848-045-0020(2)(s).

(5) A physical therapist or physical therapist assistant is responsible for the competent performance of tasks assigned to an aide whom the physical therapist or physical therapist assistant is supervising as provided in OAR 848-020-0000(5).

(6) A physical therapist assistant is always also professionally responsible for all acts and omissions of each aide under the physical therapist assistant's supervision.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160 & 688.210
Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04; PTLB 6-2005, f. 12-29-05, cert. ef. 1-1-06

848-020-0060
Prohibited Treatment-Related Tasks

A physical therapist or physical therapist assistant shall not permit an aide to perform any of the following treatment-related tasks:

(1) Administer iontophoresis. However, an aide who has been trained to do so may assist with iontophoresis by applying the medication to the electrode so long as a physical therapist or physical therapist assistant administers it to the patient.

(2) Administer phonophoresis. However, an aide may operate the sound head if the physical therapist or physical therapist assistant has applied the medication to the patient, determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(3) Administer electrotherapy. However an aide may perform this task if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the electrode placements, treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(4) Administer ultrasound. However an aide may perform this task if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(5) Administer mechanized or manual traction.

(6) Perform manual stretching with the goal of increasing range of motion, neuro-facilitation or cardiac therapeutic exercise.

(7) Perform soft tissue mobilization or massage (other than effleurage and petrissage). However, an aide who is separately licensed or registered under another Oregon statute to do so may perform these tasks if done under the direction and on-site supervision specified in OAR 848-020-0000(5)(a).

(8) Wound debridement.

(9) Administer tilt table or standing frame. However an aide may perform these tasks if the physical therapist or physical therapist assistant has examined the patient in person on the day of treatment and determined the treatment protocols and parameters, as provided in the plan of care, and authorizes the aide to provide the treatment.

(10) Joint mobilization.

(11) Determine or modify a plan of care, or initiate or administer a procedure or modality the first time that procedure or modality is administered to a patient.

(12) Independently make entries in a patient record, except for objective information about the treatment provided by the aide. The aide shall authenticate the record entry as provided in OAR 848-040-0150(2). A physical therapist or physical therapist assistant may also dictate information to an aide for entry into a patient medical record, so long as the physical therapist or physical therapist assistant authenticates such entries.

(13) Instruct a patient or a patient's caregiver in the application of any treatment.

(14) Except as required to respond to an inquiry by the Board or other person authorized to receive the information, answer or discuss any questions regarding a patient's status or treatment with anyone other than the physical therapist or physical therapist assistant.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160 & 688.210
Hist.: PT 3-1994, f. & cert. ef. 7-29-94; PTLB 4-2004, f. & cert. ef. 12-29-04; PTLB 6-2005, f. 12-29-05, cert. ef. 1-1-06

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Adm. Order No.: PTLB 7-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Repealed: 848-030-0000, 848-030-0010
Subject: Entire Rule repealed as unnecessary and irrelevant with the passage of HB 3260, Chapter 627.
Rules Coordinator: James Heider—(971) 673-0203

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Adm. Order No.: PTLB 8-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Adopted: 848-040-0117, 848-040-0147
Rules Amended: 848-040-0105, 848-040-0110, 848-040-0120
Rules Repealed: 848-040-0115
Subject: • Restate under General Standards of Practice the requirement to refer a patient to a medical provider after 30 days of treatment.
• Update Standards for Authorization to Provide Physical Therapy Services to reflect the treatment of patients without a referral.
• Add a new section relevant to the use of PT Students and the Standards for Treatment.
Rules Coordinator: James Heider—(971) 673-0203

848-040-0105
General Standards for Practice

(1) Licensees shall practice competently. A licensee practices competently when the licensee uses that degree of care, skill and diligence that would be used by a reasonable, careful and prudent licensee under the same or similar circumstances.

(2) A physical therapist must immediately refer a patient to an appropriate medical provider if signs or symptoms are present that require treatment or diagnosis by such provider or for which physical therapy is contraindicated or if treatment for the signs or symptoms is outside the knowledge of the physical therapist or scope of practice of physical therapy.

(3) A licensee shall not delegate to another person any task that the person is not legally authorized to perform or is not qualified by training and experience to perform.

(4) A licensee shall not provide treatment intervention that is not warranted by the patient's condition.

(5) A licensee shall respect the privacy and dignity of the patient in all aspects of practice.

(6) A licensee shall comply with the laws and rules governing the use and disclosure of a patient's protected health information as provided in ORS 192.518 to 192.523.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010 & 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06

848-040-0110
General Standards for Record Keeping

(1) The licensee who performs the physical therapy service shall prepare a complete an accurate record for every patient, regardless of whether compensation is given or received for the therapy services and regardless of whether the patient receives treatment pursuant to a referral or is self-referred.

(2) The record shall contain information for every physical therapy service provided, the date the service was provided and the date the entry was made in the record.

(3) The record shall be prepared on the date of service.

(4) The record shall be maintained in a readily accessible form.

(5) The licensee who performs the physical therapy service shall authenticate the record of the service that was performed. Authentication may be made by written signature or by computer. If authentication is by computer, the licensee shall not permit another person to use the licensee's password to authenticate the entry. Authentication may not be accomplished by the use of initials, except when a record entry identifying an error is authenticated. A rubber stamp may not be used to authenticate any entry in a patient record.

(6) Non-licensees, including aides, may prepare treatment-related entries for the patient record for authentication by the treating licensee. The requirement for authentication shall not apply to records not related to treatment.

(7) Either the permanent record or the record prepared on the date of service shall be readily accessible to a licensee prior to when that licensee provides subsequent treatment to the patient.

(8) All entries shall be legible and handwritten records shall be in ink.

(9) Abbreviations may be used if they are recognized standard physical therapy abbreviations or are approved for use in the specific practice setting.

(10) When an error in a record is discovered, the error shall be identified and corrected. The erroneous entry shall be crossed out, dated and initialed or otherwise identified as an error in an equivalent written manner by the author of the erroneous entry.

(11) Late entries or additions to entries shall be documented when the omission is discovered with the following written at the beginning of the entry: "late entry for (date)" or "addendum for (date)" and authenticated;

(12) Documentation by a student physical therapist (SPT) shall be authenticated by the student and by a supervising physical therapist.

(13) Documentation by a student physical therapist assistant (SPTA) shall be authenticated by the student and by a supervising physical therapist or supervising physical therapist assistant.

(14) Documentation by a person who holds a physical therapist temporary permit issued under OAR 848-010-0026(1)(a) or (1)(c) shall be authenticated by the permit holder and by a supervising physical therapist.

(15) Documentation by a person who holds a physical therapist assistant temporary permit issued under OAR 848-010-0026(1)(a) shall be authenticated by the permit holder and by a supervising physical therapist or supervising physical therapist assistant.

(16) For purposes of the Board's enforcement of these rules, patient records shall be kept for a minimum of seven years measured from the date of the most recent entry.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010 & 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06

848-040-0117
Standards For Authorization To Provide Physical Therapy Services

As a result of legislative changes effective January 1, 2006, physical therapists are no longer required to meet additional educational requirements in order to evaluate and treat a patient without a referral. The various circumstances, conditions and limitations under which a physical therapist may now evaluate and treat a patient are as follows in subsections (1), (2), (3), (4) and (5) of this rule.

(1) A physical therapist may initiate and provide physical therapy to a self-referred patient as follows:

(a) Treatment shall not continue past 30 days from the initial date of treatment unless the therapist receives a written or oral referral or authorization from a provider identified in ORS 688.132(1).

(b) If the therapist receives a referral or authorization after the initial 30 days, treatment may be provided in accordance with the referral or authorization. If the referral specifies or identifies specific physical therapy interventions, precautions or contraindications for therapy, physical therapy shall not be provided beyond those specifications or limitations without further authorization.

(c) As provided in ORS 688.132(2), a motor vehicle liability insurer is not required to pay personal injury protection benefits for physical therapy treatment provided to a self-referred patient.

(2) A physical therapist may initiate and provide physical therapy upon a written or oral referral or authorization from a provider identified in ORS 688.132(1) as follows:

(a) If the referral or authorization specifies or identifies specific physical therapy interventions, precautions, or contraindications for therapy, physical therapy shall not be provided beyond those specifications or limitations without further authorization.

(b) If a patient who is being treated pursuant to a referral or authorization requests treatment for a diagnosis or condition that is different and separate from the diagnosis or condition that is the subject of the referral, the physical therapist may initiate and provide treatment. In such case, the provisions of subsection (1)(a) of this rule shall apply.

(c) If a physical therapist receives a referral or authorization from a provider identified in ORS 688.132(1) at any time during the first 30 days of treatment, such referral or authorization shall satisfy the requirements of ORS 688.132(1)(b). If a referral or authorization specifies the number of treatments or a duration of treatment extending beyond 30 days, the physical therapist may treat the patient for that duration and may extend treat-

ment for a reasonable period of time if necessary for the patient to receive all authorized treatments.

(3) A physical therapist may initiate physical therapy without a written or oral referral or authorization, and is not required to refer the patient after 30 days under ORS 688.132(1)(b), if the patient meets one of the following criteria:

(a) The individual is a child or a student eligible for special education, as defined by state or federal law, and is being seen pursuant to the child's or the student's individual education plan or individual family service plan;

(b) The individual is a student athlete at a public or private school, college or university and is seeking treatment in that role as athlete; or

(c) The individual is a resident of a long term care facility as defined in ORS 442.015, a residential facility as defined in ORS 443.400, an adult foster home as defined in ORS 443.705 or an intermediate care facility for mental retardation pursuant to federal regulations.

(4) A physical therapist may provide physical therapy treatment to an animal under a referral from a veterinarian licensed under ORS chapter 686. The referral must be in writing and specify the treatment or therapy to be provided pursuant to ORS 686.040(4). The standard of care and documentation for physical therapy care to an animal shall be as provided for veterinarians under ORS Chapter 686.

(5) Notwithstanding the provisions of this rule, and pursuant to ORS 656.250, a physical therapist shall not provide compensable services to injured workers governed by ORS chapter 656 except as allowed by a governing managed care organization contract or as authorized by the worker's attending physician.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010
Hist.: PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06

848-040-0120
Standards For Record Of Authorization

(1) A written referral received from a provider identified in ORS 688.132(1) shall be included in the patient record. In order to qualify as an authorization, a written referral must include, at a minimum, the name of the patient, the name of the provider, authentication by the provider and the date of the referral.

(2) An oral referral received from a provider identified in ORS 688.132(1) shall be documented in the patient record. Documentation shall include the name of the provider; the name of the person communicating the referral, if not the provider; the date the referral was received; the name of the person to whom the oral referral was communicated; the name of the patient; and a description of the referral, including diagnosis, frequency and duration, if specified.

(3) An oral referral must be followed-up with a written referral from the provider.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010 & 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06

848-040-0147
Standards for Treatment by Students

(1) A physical therapist may allow a student physical therapist (SPT) or student physical therapist assistant (SPTA) to provide treatment consistent with the individual student's education, experience and skills.

(2) A physical therapist assistant may allow an SPTA to provide treatment consistent with the individual student's education, experience and skills.

(3) At all times, a supervising physical therapist must provide on-site supervision of an SPT or SPTA who provides treatment to a patient.

(4) For purposes of this rule "supervising physical therapist" means the physical therapist who is responsible for that patient's treatment on the day the SPT or SPTA provides treatment.

(5) For purposes of this rule "on-site supervision" means that at all times the supervising physical therapist is in the same building and immediately available to provide in person direction, assistance, advice or instruction to the student.

(6) A physical therapist may delegate supervision of an SPTA to a physical therapist assistant and the provision of subsections (3), (4) and (5) of this rule shall apply to the physical therapist assistant.

(7) Documentation by a student physical therapist (SPT) shall be authenticated on the same day by the student and by a supervising physical therapist. Documentation by a student physical therapist assistant (SPTA) shall be authenticated by the student and by a supervising physical therapist or supervising physical therapist assistant. A SPT's documentation must be completed pursuant to OAR 848-010-0110.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010
Hist.: PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06

Adm. Order No.: PTLB 9-2005
Filed with Sec. of State: 12-29-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Amended: 848-045-0010, 848-045-0020
Subject: • Updates the wording for Grounds for Discipline of a Licensee to include new content and terminology from HB 3260.

• Allows the Board to impose a sanction that could assess the reasonable costs of a proceeding under ORS 688.145 as a civil penalty. This would include the costs of the investigation, Board legal fees, and Contested Case Hearing costs.

• Wording added to further clarify the use of the term "DOCTOR" by a physical therapist.

Rules Coordinator: James Heider—(971) 673-0203

848-045-0010
Authority and Sanctions

(1) If a licensee practices in a manner detrimental to the public health and safety or engages in illegal, unethical or unprofessional conduct as defined by the statutes and OAR 848-045-0020(2), the Board, after notice and opportunity for hearing as provided in ORS 688.145, may:

(a) Suspend or revoke a license or temporary permit.

(b) Impose a civil penalty not to exceed $5,000.

(c) Impose probation with conditions.

(d) Impose conditions, restrictions or limitations on practice.

(e) Reprimand the licensee.

(f) Impose any other appropriate sanction, including assessment of the reasonable costs of a proceeding under ORS 688.145 as a civil penalty. Costs include, but are not limited to, the costs of investigation, attorney fees, hearing officer costs and the costs of discovery.

(2) A disciplinary sanction imposed against a licensee shall be generally consistent with sanctions imposed by the Board against other licensees in substantially similar cases.

(3) In lieu of initiating a disciplinary action under section (1) of this rule against a licensee who has an addiction to or dependency on alcohol, legend drugs or controlled substances which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety, the Board may enter into a confidential agreement with the licensee for diversion to a treatment program under Division 50 of these rules.

(4) If a licensee has a mental, emotional or physical condition which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety, the Board, after notice and opportunity for hearing as provided in ORS 688.145, may suspend or revoke the license or temporary permit, impose probation with conditions, or impose conditions, restrictions or limitations on practice.

(5) As used in this rule, "licensee" includes a temporary permit holder.

Stat. Auth.: ORS 688.140, 688.160 & 688.210
Stats. Implemented: ORS 688.140, 688.145, 688.220 & 688.235
Hist.: PTLB 7-2004, f. & cert. ef. 12-29-04; PTLB 9-2005, f. 12-29-05, cert. ef. 1-1-06

848-045-0020
Grounds for Discipline of a Licensee

(1) The Board may impose a sanction as provided in 848-045-0010(1) on a licensee for illegal, unethical or unprofessional conduct. As used in this rule, "licensee" includes a temporary permit holder.

(2) A licensee commits or engages in illegal, unethical or unprofessional conduct if the licensee:

(a) Fails to disclose requested information, conceals material facts or provides false or materially misleading information on an application or during the application process for a temporary permit, license or renewal, or willfully makes a false statement on an application;

(b) Is disciplined by another Oregon state licensing board or out-of-state licensing board for conduct which if committed in Oregon would be grounds for discipline under this rule;

(c) Is convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2);

(d) Is convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2);

(e) Commits gross negligence or multiple acts of negligence in practice. The Board may take into account relevant factors and practices, including but not limited to the standard of practice generally and currently followed and accepted by persons licensed to practice physical therapy in this state, the current teachings at accredited physical therapy schools

and relevant technical reports published in recognized physical therapy journals in determining the definition of gross negligence;

(f) Practices physical therapy while under the influence of intoxicating liquors or under the influence of a controlled substance;

(g) Has an addiction to or dependency on alcohol, legend drugs or controlled substances which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(h) Violates the provisions of ORS 688.010 to 688.220 or any administrative rule, or violates or fails to comply with any order of the Board;

(i) Engages in any act involving moral turpitude, including, but not limited to fraud, deceit, dishonesty, violence, or illegal activity undertaken for personal gain, subject to the provisions of ORS 670.280(3);

(j) Unnecessarily exposes a patient's body to the view of the therapist or other persons;

(k) Engages in a conversation with a patient that is not necessary for the provision of treatment and that is personally intrusive or otherwise inappropriate;

(L) Commits or engages in any act of sexual misconduct involving a patient, including but not limited to any acts or statements of a sexual nature that do not contribute to appropriate physical therapy treatment;

(m) Engages in any sexual conduct, including dating, with a patient, whether initiated by the patient or the licensee. For purposes of this subsection, "patient" includes any person who has not been discharged from that therapist's care;

(n) Obtains or attempts to obtain any fee by fraud or misrepresentation, or makes a false or fraudulent claim for health care payment as provided in ORS 165.690 to 165.694;

(o) Engages in exploitation of a patient, which includes but is not limited to the following:

(A) Failure to maintain an appropriate patient/therapist relationship;

(B) Obtaining or attempting to obtain compensation for physical therapy services that were not provided to the patient;

(C) Provides physical therapy services or participates in physical therapy services solely for reasons of personal or institutional financial gain;

(D) Provides physical therapy services under circumstances where there is no benefit to be obtained by the patient from such services;

(E) Accepting, soliciting or borrowing anything of more than nominal value from a patient or a member of the patient's family except for reasonable compensation for physical therapy services provided to the patient. Nominal value shall be determined in the context of the particular relationship and circumstances; or

(F) Influencing a patient or the patient's family to utilize, purchase or rent any equipment based on the direct or indirect financial interests of the licensee rather than on the therapeutic value to the patient. A licensee who owns or has a direct financial interest in an equipment or supply company must disclose the interest if the licensee sells or rents the equipment or recommends the purchase or rental of the equipment to the patient.

(p) Knowingly makes a false entry or false alteration in a patient record;

(q) Engages in deceptive consumer practices, including but not limited to:

(A) Using, disseminating or publishing any advertising matter, promotional literature, testimonial, claim or guarantee that is false, misleading or deceptive;

(B) Practicing under a false, misleading or deceptive name, impersonating another licensee or fraudulently using or permitting the use of a license number in any way;

(C) Making a representation as to the licensee's skill or the efficacy or value of a treatment that the licensee knows or should know is false or misleading; or

(D) Using the title "Doctor" or "Dr." with patients in a practice setting or on business cards, letterhead or professional advertisement or signage. A physical therapist who holds a doctoral degree in physical therapy may only use the initials "DPT" or the words "doctorate in physical therapy" after the physical therapist's name.

(r) Practices physical therapy with a lapsed license;

(s) Knowingly or with reason to know, employs, aids, abets or permits any unlicensed person or person with a lapsed license to practice physical therapy;

(t) Fails to report in writing to employer that licensee provided physical therapy services while unlicensed or with a lapsed license or fails to provide a copy to the Board of such report;

(u) Fails to cooperate with the Board, which includes but is not limited to the following:

(A) Failure to respond fully and truthfully to a question or request for information from the Board;

(B) Failure to provide information or documents to the Board within the time specified by the Board;

(C) Failure to appear and provide information at an interview requested by the Board;

(D) Failure to timely produce and temporarily surrender custody of an original patient record requested by the Board and which is in the possession or under the control of the licensee, or failure to produce all portions of the patient record requested; or

(E) Deceiving or attempting to deceive the Board regarding any matter, including by altering or destroying any record or document;

(v) Interferes with or uses threats or harassment to delay or obstruct any person in providing information or evidence to the Board in any matter, investigation, contested case proceeding or other legal action instituted by the Board;

(w) Discharges an employee based primarily on the employee's attempt to comply or aid in the compliance with Board rules;

(x) Fails to notify the Board of any conduct by another licensee which reasonably appears to be illegal, unethical, unprofessional under the licensing statutes or these administrative rules, aids or causes another person, directly or indirectly, to violate ORS 688.010 to 688.220 or rules of the Board; or

(y) Fails to notify the Board of a change in the licensee's name, address, contact telephone number or place of employment or business as required by OAR 848-005-0030.

Stat. Auth.: ORS 688.140, 688.160 & 688.210
Stats. Implemented: ORS 688.140, 688.145, 688.220 & 688.235
Hist.: PTLB 7-2004, f. & cert. ef. 12-29-04; PTLB 9-2005, f. 12-29-05, cert. ef. 1-1-06

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Public Utility Commission
Chapter 860

Adm. Order No.: PUC 8-2005
Filed with Sec. of State: 12-21-2005
Certified to be Effective: 12-21-05
Notice Publication Date: 11-1-05
Rules Amended: 860-011-0080
Subject: This amendment revises OAR 860-011-0080(15)(d) to raise the late statement fee for water utilities from $25 to $40. The increased fee serves as a better incentive or stronger penalty, and it encourages timely filing and payments. The higher amount also makes an additional collection option available to the Commission when a water utility does not make the required payment.
Rules Coordinator: Diane Davis—(503) 378-4372

860-011-0080
Schedule of Fees and Charges

Unless otherwise provided, the Commission will impose the following fees and charges:

(1) Photocopies:

(a) No charge for 20 pages or less, in excess of 20 pages, per page: 25 cents (for example, if 21 pages requested, charge would be $5 minimum plus 25 cents, for a total of $5.25).

(b) Other government agencies, per page from first page: 05 cents.

(2) Certification of true copies of public documents (per document certification): $10.

(3) Maps of specific area boundaries: $15.

(4) Hearing transcripts: At cost. A copy of a public hearing transcript shall be supplied to a party without cost upon the filing with the Commission of a satisfactory affidavit of indigency, pursuant to ORS 756.521. Such a request shall be filed on a form supplied by the Commission and contain information for the Commission to use to determine the eligibility of the requesting party.

(5) Statistical reports (second and subsequent copies): $15.

(6) Facsimile transmission (FAX) charges: No charge for first 15 pages transmitted; additional pages, per page: $1.

(7) Audio recordings: $5 per package.

(8) Staff research time: At cost.

(9) Annual subscription to all Commission orders or notices of specific hearings will be provided under the following schedule. Subscribers will be notified of renewal requirements on a yearly basis. Orders: $100; Hearing Notices: $50. Administrative Rules update service: $75.

(10) Computer services: At cost.

(11) Billing: The Commission may require cash payment before honoring any request. Billings for unpaid balances may accompany mailed copies.

(12) Waiver of fees: No fee shall be charged or collected for copies of published documents furnished to or provided for routine requests for one

copy of a Commission order, administrative rules, and general publications. Requests for additional copies will be subject to applicable charges.

(13) Late Fees and Penalties:

(a) Check Returned for Non-Sufficient Funds: $25.

(b) Costs Incurred by the Commission to Collect Past-Due Amounts: At Cost.

(14) Late Payments:

(a) Interest on Annual Fees: None.

(b) Interest on Residential Service Protection Fund (RSPF): 9 percent per Annum.

(c) Penalty on Annual Fees: 2 Percent per Month.

(d) Penalty on RSPF: 9 percent of Unpaid Fee, up to $500 maximum per reporting period.

(15) Late Statements and Reports:

(a) Electric Company Annual Fee Statement: $100.

(b) Gas Utility Annual Fee Statement: $100.

(c) Telecommunications Providers Annual Fee Statement: $100.

(d) Water Utility Annual Fee Statement: $40.

(e) RSPF Report: $100.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Hist.: PUC 13-1985, f. & ef. 9-26-85 (Order No. 85-886); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-015-0005; PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 3-1996, f. & cert. ef. 7-19-96 (Order No. 96-181); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 16-1998, f. & cert. ef. 10-12-98; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 8-2005, f. & cert. ef. 12-21-05

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Adm. Order No.: PUC 9-2005
Filed with Sec. of State: 12-23-2005
Certified to be Effective: 12-23-05
Notice Publication Date: 4-1-05
Rules Adopted: 860-023-0054
Rules Amended: 860-023-0000, 860-023-0001, 860-023-0005
Subject: This rulemaking establishes service quality rules for intrastate toll carriers in accordance with ORS 759.020(6). The service quality standard is not mandatory; an intrastate toll provider may provide service quality that is less than or greater than this adopted standard, but the provider must inform its customers of the level of service it intends to provide and must also specify that level in its annual report to the commission.
Rules Coordinator: Diane Davis—(503) 378-4372

860-023-0000
Applicability of Division 023

The rules contained in this Division apply to energy utilities, large telecommunications utilities, telecommunications carriers, and intrastate toll service providers, as defined in OAR 860-023-0001.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 759.030, 759.040 & 759.045
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 14-1997, f. & cert. ef. 11-20-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 14-2000, f. & cert. ef. 8-23-00; PUC 11-2001, f. & cert. ef. 4-18-01; PUC 9-2005, f. & cert .ef. 12-23-05

860-023-0001
Definitions for Service Standards

For purposes of this Division, except when a different scope is explicitly stated:

(1) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, or other legal entity that has applied for, been accepted for, or is currently receiving service from an energy utility, large telecommunications utility, or intrastate toll service provider.

(2) "Energy utility" means a public utility as defined in ORS 757.005 except a water utility or wastewater utility. An energy utility can be an "electric utility, "gas utility," or "steam heat utility."

(3) "Intrastate" means telecommunications service that originates and terminates in Oregon.

(4) "Intrastate toll service provider" means a telecommunications carrier that provides intrastate toll services to retail customers.

(5) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(6) "Local exchange service" has the meaning given to "local exchange telecommunications service" in ORS 759.005(1)(c).

(7) "Telecommunications carrier" has the meaning provided in ORS 759.400(3).

(8) "Toll" has the meaning provided in ORS 759.005(h).

Stat. Auth.: ORS 183 & 756
Stats. Implemented: ORS 756.040 & 759.005
Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 9-2005, f. & cert .ef. 12-23-05

860-023-0005
Maintenance of Plant and Equipment by Energy Utilities, Large Telecommunications Utilities, and Intrastate Toll Service Providers

Each energy utility, large telecommunications utility, and intrastate toll service provider must have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each energy utility, large telecommunications utility, and intrastate toll service provider must inspect its plant distribution system and facilities in such manner, and with such frequency, as may be needed to ensure a reasonably complete knowledge about its condition and adequacy at all times. Each energy utility, large telecommunications utility, and intrastate toll service provider must keep such records of the conditions found as the utility considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 757.020 & 759.035
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 13-2002, f. & cert. ef. 3-26-02; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 9-2005, f. & cert .ef. 12-23-05

860-023-0054
Retail Intrastate Toll Service Provider Service Standards

Every intrastate toll service provider must adhere to the following standards:

(1) Measurement and Reporting Requirement. Each intrastate toll service provider must take the measurements required by this rule and report them to the Commission as specified.

(2) Additional Reporting Requirements. The Commission may require a telecommunications carrier to provide additional reports on any item covered by this rule.

(3) Blocked Calls. An intrastate toll service provider must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of all properly dialed calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of the Commission-approved service levels listed in subsection (b) of this section, or alternatively, provide the level of service specified by the intrastate toll service provider in accordance with ORS 759.020(6).

(a) Measurement:

(A) An intrastate toll service provider must collect traffic data; that is, peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups;

(B) System blockage will be determined by special testing at the wire center. Commission Staff or a carrier technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percent of completion of the calls shall be calculated.

(b) Commission-Approved Service Level:

(A) An intrastate toll service provider must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P01 grade of service);

(B) An intrastate toll service provider must maintain its network operation so that 99 percent of the calls do experience blockage during any normal busy hour. If a final trunk group provisioned by an intrastate toll service provider exceeds the blockage standard specified herein for four consecutive months, the trunk group will be considered in violation of this standard.

(c) Reporting Requirement: In accordance with ORS 759.020(6), each intrastate toll service provider must inform customers of the service level furnished by the carrier. Each provider must also identify the service level it plans to furnish in its annual report filed with the Commission. An intrastate toll service provider must file a switching system blockage report after a Commission-directed switching-system blockage test is completed.

(d) Retention Requirement: Each intrastate toll service provider must maintain records for one year.

(4) Special Service Lines. All special service access lines must meet the performance requirements specified in applicable intrastate toll service provider tariffs or contracts.

(5) An intrastate toll service provider connected to the facilities of other telecommunications carriers as defined in ORS 759.400(3) shall operate its system in a manner that will not impede a telecommunications carrier's or intrastate toll service provider's ability to meet required standards of service. A telecommunications carrier or intrastate toll service provider shall report interconnection operational problems promptly to the Commission.

(6) Alternatives to These Telecommunications Standards. An intrastate toll service provider whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules, if it specifically indicates the alternative standards to be applied, or indicates which standards would be waived.

(7) Remedies for Violation of This Standard:

(a) If a telecommunications carrier subject to this rule violates one or more of its service standards, the Commission must require the intrastate toll service provider to submit a plan for improving performance as provided in ORS 759.450(5). If an intrastate toll carrier does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, penalties may be assessed in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that an intrastate toll service provider subject to this rule has violated one or more of its service standards, the Commission shall give the intrastate toll service provider notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the intrastate toll service provider to provide the following relief to the affected customers:

(A) Customer billing credits equal to the associated nonrecurring and recurring charges of the intrastate toll service provider for the affected service for the period of the violation; or

(B) Other relief authorized by Oregon law.

(8) Exemption from these rules:

(a) An intrastate toll service provider may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption including, but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange, it may exempt all telecommunications carriers providing telecommunications services in those exchanges from the requirements of this rule, in whole or in part. In making this determination, the Commission must consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Price to cost ratios;

(F) Number of suppliers;

(G) Price demand side substitutability (for example, customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a telecommunications carrier or intrastate toll service provider petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications carriers providing the applicable service(s) in the exchange(s) in question. Such notified telecommunications carriers will be provided an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in Section 8(b)(A) through (H), the commenting telecommunications carrier be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) For purposes of this rule, if a final trunk group provisioned by an intrastate toll provider exceeds the blockage standard specified by the provider for four consecutive months, that trunk group will be considered in violation of the provider's service standard.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 756.040, 759.020, 759.030, 759.050 & 759.450
Hist.: PUC 9-2005, f. & cert .ef. 12-23-05

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Adm. Order No.: PUC 10-2005
Filed with Sec. of State: 12-27-2005
Certified to be Effective: 12-27-05
Notice Publication Date: 4-1-05
Rules Amended: 860-023-0055, 860-032-0012, 860-034-0390
Subject: This rulemaking updates the service quality rules for large and small telecommunications utilities and for competitive telecommunications providers.
Rules Coordinator: Diane Davis—(503) 378-4372

860-023-0055
Retail Telecommunications Service Standards for Large Telecommunications Utilities

Every large telecommunications utility must adhere to the following standards:

(1) Definitions.

(a) "Access Line" — A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" — The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged across the busy season is termed the average busy season busy hour traffic;

(c) "Average Speed of Answer" — The average time that elapses between the time the call is directed to a representative and the time it is answered;

(d) "Blocked Call" — A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(e) "Customer" — Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(f) "Exchange" — Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(g) "Final Trunk Group" — A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(h) "Force Majeure"— Circumstances beyond the reasonable control of a large telecommunications utility, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the large telecommunications utility has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the large telecommunications utility has made a timely application for such approval;

(C) The customer, including but not limited to, the customer's construction project or lack of facilities, or failure to provide access to the customer's premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider's network;

(i) "Held Order for Lack of Facilities" — Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(j) "Initial Commitment Date" — The initial date pledged by the large telecommunications utility to provide a service, facility, or repair action. This date is within the minimum time set forth in these rules or a date determined by good faith negotiations between the customer and the large telecommunications utility;

(k) "Network Interface" — The point of interconnection between the large telecommunications utility's communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface must be located on the customer's side of the large telecommunications utility's protector;

(l) "Retail Telecommunications Service" — A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a large telecommunications utility to another telecommunications utility or competitive telecommunications provider, unless the telecommunications utility or competitive telecommunications provider receiving the service is the end user of the service;

(m) "Tariff" — A schedule showing rates, tolls, and charges that the large telecommunications utility has established for a retail service;

(n) "Trouble Report" — A report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface, to a large telecommunications utility by or on behalf of that large telecommunications utility's customer;

(o) "Wire Center" — A facility where local telephone subscribers' access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include collocation arrangements in a connecting large telecommunications utility's wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A large telecommunications utility must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). The service quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a large telecommunications utility to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the large telecommunications utility must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the large telecommunications utility. The large telecommunications utility may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the large telecommunications utility may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving large telecommunications utility must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met — A large telecommunications utility must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its Oregon service territory. Commitments missed for reasons solely attributed to customers, another telecommunications utility or a competitive telecommunications provider may be excluded from the calculation of the “commitments met” results;

(B) Held Orders for Lack of Facilities — A large telecommunications utility must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met — Each large telecommunications utility must meet at least 90 percent of its commitments for service;

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each large telecommunications utility must not exceed the larger of two per wire center per month averaged over the large telecommunications utility’s Oregon service territory, or five held orders for lack of facilities per 1,000 inward orders;

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the large telecommunications utility’s Oregon service territory.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each large telecommunications utility must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each large telecommunications utility must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A large telecommunications utility must determine the number of customer trouble reports that were received during the month. The large telecommunications utility must relate the count to the total working access lines within a reporting wire center. A large telecommunications utility need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A large telecommunications utility may take an exclusion if the “buried cable location” (locate) was either not requested or was requested and was accurate. If a large telecommunications utility or the utility’s contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer’s unfamiliarity with the use or operation of a new (within 30 days) feature or service;

(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Telecommunications Utilities or Competitive Telecommunications Providers: A trouble report caused solely by another telecommunications utility or competitive telecommunications provider;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the large telecommunications utility at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A large telecommunications utility must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers with more than 1,000 access lines: two per 100 working access lines per wire center more than three times during a sliding 12-month period.

(B) For wire centers with 1,000 or less access lines: three per 100 working access lines per wire center more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission:

(A) The trouble report rate by wire center;

(B) The reason(s) a wire center meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center.

(d) Retention Requirement: Each large telecommunications utility must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission’s request. The large telecommunications utility must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the large telecommunications utility until the trouble is resolved. The large telecommunications utility must provide each customer making a network trouble report with a commitment time when the large telecommunications utility will repair or resolve the problem.

(a) Measurement: A large telecommunications utility must calculate the percentage of trouble reports cleared within 48 hours for each repair center.

(b) Objective Service Level: A large telecommunications utility must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center.

(d) Retention Requirement: None.

(7) Blocked Calls. A large telecommunications utility must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A large telecommunications utility must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups;

(B) System blockage is determined by special testing at the wire center. Commission Staff or a telecommunications utility technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A large telecommunications utility must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service);

(B) A large telecommunications utility must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a large telecommunications utility fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each large telecommunications utility must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the telecommunications utility or competitive telecommunications provider, if other than the reporting large telecommunications utility, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each large telecommunications utility must maintain records for one year.

(8) Access to Large Telecommunications Utility Representatives. This rule sets the allowed time for large telecommunications utility business office or repair service center representatives to answer customer calls.

(a) Measurement:

(A) Direct Representative Answering: A large telecommunications utility must measure the answer time from the first ring at the large telecommunications utility business office or repair service center;

(B) Driven, Automated, or Interactive Answering System: The option of transferring to the large telecommunications utility representative must be included in the initial local service-screening message. The large telecommunications utility must measure the answering time from the point a call is directed to its representatives; e.g., when the call leaves the Voice Response Unit;

(C) Each large telecommunications utility must calculate:

(i) The monthly percentage of the total calls placed to the business office and repair service center and the number of calls answered by representatives within 20 seconds; or

(ii) The average speed of answer time for the total calls received by the business office and repair service center.

(b) Objective Service Level:

(A) No more than 1 percent of calls to the large telecommunications utility business office or repair service center may encounter a busy signal; and

(B) The large telecommunications utility representatives must answer at least 80 percent of calls within 20 seconds or have an average speed of answer time of 50 seconds or less.

(c) Reporting Requirement:

(A) Each large telecommunications utility must report monthly to the Commission an exception report if busy signals were encountered in excess of 1 percent for either the business office or repair service center; and

(B) Each large telecommunications utility must report monthly to the Commission the percentage of calls answered within 20 seconds or the average speed of answer time for both the business office and repair service center. Once a method of measurement is reported by the provider, that method can only be changed with permission of the Commission.

(d) Retention Requirement: None.

(9) Interruption of Service Notification. A large telecommunications utility must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A large telecommunications utility must notify the Commission when an interruption occurs that exceeds the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be rerouted to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A large telecommunications utility must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each large telecommunications utility must make all loop parameter measurements at the network interface, or as close as access allows.

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);

(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level — C message weighting (dBrnC);

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBrnC.

(c) Reporting Requirement: A large telecommunications utility must report measurement readings as directed by the Commission.

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each large telecommunications utility must make measurements at or to the serving wire center.

(b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds;

(B) A large telecommunications utility must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable large telecommunications utility tariffs or contracts.

(13) Large Telecommunications Utility Interconnectivity. A large telecommunications utility connected to the facilities of another telecommunications utility or competitive telecommunications provider must operate its system in a manner that will not impede either company's ability to meet required standards of service. A large telecommunications utility must report interconnection operational problems promptly to the Commission.

(14) Alternatives to These Telecommunications Standards. A large telecommunications utility whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.

(15) Remedies for Violation of This Standard.

(a) If a large telecommunications utility subject to this rule fails to meet a minimum service quality standard, the Commission must require the large telecommunications utility to submit a plan for improving performance as provided in ORS 759.450(5). If a large telecommunications utility does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a large telecommunications utility subject to this rule has violated one or more of its service standards, the Commission must give the large telecommunications utility notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the large telecommunications utility to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the large telecommunications utility for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

(16) Exemption From These Rules.

(a) A large telecommunications utility may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption, including but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all telecommunications utilities and competitive telecommunications providers providing telecommunications services in the exchange(s) from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a large telecommunications utility petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications utilities and competitive telecommunications providers providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified telecommunications utilities and competitive telecommunications providers an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (16)(b)(A) through (H), the commenting telecommunications utilities and competitive telecommunications providers be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) The Commission may grant a large telecommunications utility's petition for an exemption from service quality reporting requirements if the large telecommunications utility meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

[Publications: Publications referenced are available from the agency]
Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented:ORS 756.040, 759.020, 759.030 & 759.050
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 23-1985, f. & ef. 12-11-85 (Order No. 85-1171); PUC 1-1997, f. & ef. 1-7-97 (Order No. 96-332); PUC 13-2000, f. & cert. ef. 6-9-00; PUC 13-2001, f. & cert. ef. 5-25-01; PUC 7-2002, f. & cert. ef. 2-26-02; PUC 10-2005, f. & cert. ef. 12-27-05

860-032-0012
Retail Telecommunications Service Standards for Competitive Telecommunications Providers

Every large telecommunications utility, as defined in OAR 860-023-0001(2), must adhere to the standards in OAR 860-023-0055. Every small telecommunications utility, as defined in OAR 860-034-0010(3)(a) must adhere to the standards in OAR 860-034-0390. Every competitive telecommunications provider, as defined in ORS 759.005(2)(a), that maintains more than 1,000 access lines on a statewide basis, must adhere to the following service standards:

(1) Definitions.

(a) "Access Line" — A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" — The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged across the busy season is termed the average busy season busy hour traffic;

(c) "Average Speed of Answer" — The average time that elapses between the time the call is directed to a representative and the time it is answered;

(d) "Blocked Call" — A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(e) "Customer" — Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(f) "Exchange" — Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(g) "Final Trunk Group" — A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(h) "Force Majeure"— Circumstances beyond the reasonable control of a competitive telecommunications provider, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the competitive telecommunications provider has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the competitive telecommunications provider has made a timely application for such approval;

(C) The customer, including but not limited to, the customer's construction project or lack of facilities, or failure to provide access to the customer's premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider's network;

(i) "Held Order for Lack of Facilities" — Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(j) "Initial Commitment Date" — The initial date pledged by the competitive telecommunications provider to provide a service, facility, or repair action. This date is within the minimum time set forth in these rules or a date determined by good faith negotiations between the customer and the competitive telecommunications provider;

(k) "Network Interface" — The point of interconnection between the competitive telecommunications provider's communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface must be located on the customer's side of the competitive telecommunications provider's protector;

(l) "Retail Telecommunications Service" — A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a competitive telecommunications provider to another competitive telecommunications provider or telecommunications utility, unless the competitive telecommunications provider or telecommunications utility receiving the service is the end user of the service;

(m) "Service Area" — The entire geographic area the Commission has certified a competitive telecommunications provider to serve. A competitive telecommunications provider may petition the Commission to designate a different geographic area as its service quality reporting area.

(n) "Tariff" — A schedule showing rates, tolls, and charges that the competitive telecommunications provider has established for a retail service;

(o) "Trouble Report" — A report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface, to a competitive telecommunications provider by or on behalf of that competitive telecommunications provider's customer, which affects the functionality and reliability of retail telecommunications service;

(p) "Wire Center" — A facility where local telephone subscribers' access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include col-

location arrangements in a connecting competitive telecommunications provider's wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A competitive telecommunications provider must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). The service quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a competitive telecommunications provider to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the competitive telecommunications provider must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the competitive telecommunications provider. The competitive telecommunications provider may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the competitive telecommunications provider may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving competitive telecommunications provider must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met — A competitive telecommunications provider must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its Oregon service territory. Commitments missed for reasons solely attributed to customers, another competitive telecommunications provider or telecommunications utility may be excluded from the calculation of the "commitments met" results;

(B) Held Orders for Lack of Facilities — A competitive telecommunications provider must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met — Each competitive telecommunications provider must meet at least 90 percent of its commitments for service.

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each competitive telecommunications provider must not exceed the greater of two per wire center, or designated service area, per month averaged over the entire Oregon geographic area served by the competitive telecommunications provider, or five held orders for lack of facilities per 1,000 inward orders and

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the entire Oregon geographic area served by the competitive telecommunications provider.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each competitive telecommunications provider must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each competitive telecommunications provider must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A competitive telecommunications provider must determine the number of customer trouble reports that were received during the month. The competitive telecommunications provider must relate the count to the total working access lines within a reporting wire center, or designated service area. A competitive telecommunications provider need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A competitive telecommunications provider may take an exclusion if the "buried cable location" (locate) was either not requested or was requested and was accurate. If a competitive telecommunications provider or the provider's contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer's unfamiliarity with the use or operation of a new (within 30 days) feature or service;

(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Competitive Telecommunications Providers or Telecommunications Utilities: A trouble report caused solely by another competitive telecommunications provider or telecommunications utility;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the competitive telecommunications provider, at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A competitive telecommunications provider must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers, or designated service areas with more than 1,000 access lines: two per 100 working access lines per wire center, or designated service area, more than three times during a sliding 12-month period.

(B) For wire centers, or designated service area, with 1,000 or less access lines: three per 100 working access lines per wire center, or designated service area, more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission:

(A) The trouble report rate by wire center, or designated service area;

(B) The reason(s) a wire center, or designated service area, meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center, or designated service area, not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center, or designated service area.

(d) Retention Requirement: Each competitive telecommunications provider must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission's request. The competitive telecommunications provider must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the competitive telecommunications provider until the trouble is resolved. The competitive telecommunications provider must provide each customer making a network trouble report with a commitment time when the competitive telecommunications provider will repair or resolve the problem.

(a) Measurement: The competitive telecommunications provider must calculate the percentage of trouble reports cleared within 48 hours for each repair center, or designated service area.

(b) Objective Service Level: A competitive telecommunications provider must monthly clear at least 95 percent of all trouble reports with-

in 48 hours of receiving a report. Trouble reports attributed solely to customers or another competitive telecommunications provider or telecommunications utility may be excluded from the calculation of the "repair clearing time" results.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center, or designated service area.

(d) Retention Requirement: None.

(7) Blocked Calls. A competitive telecommunications provider must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A competitive telecommunications provider must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups.

(B) System blockage is determined by special testing at the wire center. Commission Staff or a competitive telecommunications provider technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A competitive telecommunications provider must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service); and

(B) A competitive telecommunications provider must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a competitive telecommunications provider fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each competitive telecommunications provider must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the competitive telecommunications provider or telecommunications utility, if other than the reporting competitive telecommunications provider, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each competitive telecommunications provider must maintain records for one year.

(8) Access to Competitive Telecommunications Provider Representatives. This rule sets the allowed time for competitive telecommunications provider business office or repair service center representatives to answer customer calls.

(a) Measurement:

(A) Direct Representative Answering: A competitive telecommunications provider must measure the answer time from the first ring at the competitive telecommunications provider business office or repair service center;

(B) Driven, Automated, or Interactive Answering System: The option of transferring to the competitive telecommunications provider representative must be included in the initial local service-screening message. The competitive telecommunications provider must measure the answering time from the point a call is directed to its representatives; e.g., when the call leaves the Voice Response Unit;

(C) Each competitive telecommunications provider must calculate:

(i) The monthly percentage of the total calls placed to the business office and repair service center and the number of calls answered by representatives within 20 seconds; or

(ii) The average speed of answer time for the total calls received by the business office and repair service center.

(b) Objective Service Level:

(A) No more than 1 percent of calls to the competitive telecommunications provider business office or repair service center may encounter a busy signal.

(B) The competitive telecommunications provider representatives must answer at least 80 percent of calls within 20 seconds or have an average speed of answer time of 50 seconds or less.

(c) Reporting Requirement:

(A) Each competitive telecommunications provider must report monthly to the Commission an exception report if busy signals were encountered in excess of 1 percent for either the business office or repair service center; and

(B) Each competitive telecommunications provider must report monthly to the Commission the percentage of calls answered within 20 seconds or the average speed of answer time for both the business office and repair service center. Once a method of measurement is reported by the provider, that method can only be changed with permission of the Commission.

(d) Retention Requirement: None.

(9) Interruption of Service Notification. A competitive telecommunications provider must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A competitive telecommunications provider must notify the Commission when an interruption occurs that exceeds any of the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be re-routed to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A competitive telecommunications provider must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each competitive provider must make all loop parameter measurements at the network interface, or as close as access allows;

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);

(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level — C message weighting (dBrnC); and

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBrnC.

(c) Reporting Requirement: A competitive telecommunications provider must report measurement readings as directed by the Commission;

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each competitive telecommunications provider must make measurements at or to the serving wire center;

(b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds; and

(B) A competitive telecommunications provider must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable competitive telecommunications provider tariffs or contracts.

(13) Competitive Telecommunications Provider Interconnectivity. A competitive telecommunications provider connected to the facilities of another competitive telecommunications provider or telecommunications utility must operate its system in a manner that will not impede either company's ability to meet required standards of service. A competitive telecommunications provider must report interconnection operational problems promptly to the Commission.

(14) Alternatives to These Telecommunications Standards. A competitive telecommunications provider whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.

(15) Remedies for Violation of This Standard.

(a) If a competitive telecommunications provider subject to this rule fails to meet a minimum service quality standard, the Commission must require the competitive telecommunications provider to submit a plan for improving performance as provided in ORS 759.450(5). If a competitive telecommunications provider does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a competitive telecommunications provider subject to this rule has violated one or more of its service standards, the Commission must give the competitive telecommunications provider notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the competitive telecommunications provider to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the competitive telecommunications provider for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

(16) Exemption From These Rules.

(a) A competitive telecommunications provider may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption, including but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all competitive telecommunications providers and telecommunications utilities providing telecommunications services in those exchanges from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a competitive telecommunications provider petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant competitive telecommunications providers and telecommunications utilities providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified competitive telecommunications providers and telecommunications utilities an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (16)(b)(A) through (H), the commenting competitive telecommunications provider or telecommunications utilities be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) The Commission may grant a competitive telecommunications provider's petition for an exemption from service quality reporting requirements if the competitive telecommunications provider meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

Stat. Auth.: ORS 183, 756 & 759
Stats. Implemented: ORS 756.040, 759.020, 759.030 & 759.050
Hist.: PUC 5-1991, f. & cert. ef. 4-3-91; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 13-2001, f. & cert. ef. 5-25-01; PUC 7-2002, f. & cert. ef. 2-26-02; PUC 10-2005, f. & cert. ef. 12-27-05

860-034-0390
Retail Telecommunications Service Standards for Small Telecommunications Utilities

Every small telecommunications utility must adhere to the following standards:

(1) Definitions.

(a) "Access Line" — A facility engineered with dialing capability to provide retail telecommunications service that connects a customer's service location to the Public Switched Telephone Network;

(b) "Average Busy Season Busy Hour" — The hour that has the highest average traffic for the three highest months, not necessarily consecutive, in a 12-month period. The busy hour traffic averaged across the busy season is termed the average busy season busy hour traffic;

(c) "Blocked Call" — A properly dialed call that fails to complete to its intended destination except for a normal busy (60 interruptions per minute);

(d) "Customer" — Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity that has applied for, been accepted, and is currently receiving local exchange telecommunications service;

(e) "Exchange" — Geographic area defined by maps filed with and approved by the Commission for the provision of local exchange telecommunications service;

(f) "Final Trunk Group" — A last-choice trunk group that receives overflow traffic and that may receive first-route traffic for which there is no alternative route;

(g) "Force Majeure" — Circumstances beyond the reasonable control of a small telecommunications utility, including but not limited to, delays caused by:

(A) A vendor in the delivery of equipment, where the small telecommunications utility has made a timely order of equipment;

(B) Local, state, federal, or tribal government authorities in approving easements or access to rights of way, where the small telecommunications utility has made a timely application for such approval;

(C) The customer, including but not limited to, the customer's construction project or lack of facilities, or failure to provide access to the customer's premises;

(D) Uncontrollable events, such as explosion, fire, floods, frozen ground, tornadoes, severe weather, epidemics, injunctions, wars, acts of terrorism, strikes or work stoppages, and negligent or willful misconduct by customers or third parties, including but not limited to, outages originating from introduction of a virus onto the provider's network;

(h) "Held Order for Lack of Facilities" — Request for access line service delayed beyond the initial commitment date due to lack of facilities. An access line service order includes an order for new service, transferred service, additional lines, or change of service;

(i) "Initial Commitment Date" — The initial date pledged by the small telecommunications utility to provide a service, facility, or repair action. This date is within the minimum time set forth in these rules or a date determined by good faith negotiations between the customer and the small telecommunications utility;

(j) "Network Interface" — The point of interconnection between the small telecommunications utility provider's communications facilities and customer terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface must be located on the customer's side of the small telecommunications utility's protector;

(k) "Retail Telecommunications Service" — A telecommunications service provided for a fee to customers. Retail telecommunications service does not include a service provided by a small telecommunications utility to another telecommunications utility or competitive telecommunications provider, unless the telecommunications utility or competitive telecommunications provider receiving the service is the end user of the service;

(l) "Tariff" — A schedule showing rates, tolls, and charges that the small telecommunications utility has established for a retail service;

(m) "Trouble Report" — A report of a malfunction that affects the functionality and reliability of retail telecommunications service on exist-

ing access lines, switching equipment, circuits, or features made up to and including the network interface, to a small telecommunications utility by or on behalf of that small telecommunications utility's customer;

(n) "Wire Center" — A facility where local telephone subscribers' access lines converge and are connected to switching equipment that provides access to the Public Switched Telephone Network, including remote switching units and host switching units. A wire center does not include collocation arrangements in a connecting small telecommunications utility's wire center or broadband hubs that have no switching equipment.

(2) Measurement and Reporting Requirements. A small telecommunications utility that maintains 1,000 or more access lines on a statewide basis must take the measurements required by this rule and report them to the Commission as specified. Reported measurements must be reported to the first significant digit (i.e., one number should be reported to the right of the decimal point). A telecommunications utility that maintains fewer than 1,000 access lines on a statewide basis need not take the required measurements and file the required reports unless ordered to do so by the Commission. The service quality objective service levels set forth in sections 4 through 8 of this rule apply only to normal operating conditions and do not establish a level of performance to be achieved during force majeure events.

(3) Additional Reporting Requirements. The Commission may require a small telecommunications utility to submit additional reports on any item covered by this rule.

(4) Provisioning and Held Orders for Lack of Facilities. The representative of the small telecommunications utility must give a retail customer an initial commitment date of not more than six business days after a request for access line service, unless a later date is determined through good faith negotiations between the customer and the small telecommunications utility. The small telecommunications utility may change the initial commitment date only if requested by the customer. When establishing the initial commitment date, the small telecommunications utility may take into account the actual time required for the customer to meet prerequisites; e.g., line extension charges or trench and conduit requirements. If a request for service becomes a held order for lack of facilities, the serving small telecommunications utility must, within five business days, send or otherwise provide the customer a written commitment to fill the order.

(a) Measurement:

(A) Commitments Met — A small telecommunications utility must calculate the monthly percentage of commitments met for service, based on the initial commitment date, across its Oregon service territory. Commitments missed for reasons solely attributed to customers, another telecommunications utility or competitive telecommunications provider may be excluded from the calculation of the "commitments met" results;

(B) Held Orders for Lack of Facilities — A small telecommunications utility must determine the total monthly number of held orders, due to lack of facilities, not completed by the initial commitment date during the reporting month and the number of primary (initial access line) held orders, due to lack of facilities, over 30 days past the initial commitment date.

(b) Objective Service Level:

(A) Commitments Met — Each small telecommunications utility must meet at least 90 percent of its commitments for service.

(B) Held Orders:

(i) The number of held orders for the lack of facilities for each small telecommunications utility must not exceed the greater of two per wire center per month averaged over the small telecommunications utility's Oregon service territory, or five held orders for lack of facilities per 1,000 inward orders; and

(ii) The total number of primary held orders for lack of facilities in excess of 30 days past the initial commitment date must not exceed 10 percent of the total monthly held orders for lack of facilities within the small telecommunications utility's Oregon service territory.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission the percentage of commitments met for service, total number of held orders for lack of facilities, and the total number of primary held orders for lack of facilities over 30 days past the initial commitment date.

(d) Retention Requirement: Each small telecommunications utility must maintain records about held orders for lack of facilities for one year. The record must explain why each order is held and the initial commitment date.

(5) Trouble Reports. Each small telecommunications utility must maintain an accurate record of all reports of malfunction made by its customers.

(a) Measurement: A small telecommunications utility must determine the number of customer trouble reports that were received during the month. The small telecommunications utility must relate the count to the total working access lines within a reporting wire center. A small telecommunications utility need not report those trouble reports that were caused by circumstances beyond its control. The approved trouble report exclusions are:

(A) Cable Cuts: A small telecommunications utility may take an exclusion if the "buried cable location" (locate) was either not requested or was requested and was accurate. If a small telecommunications utility or a utility's contractor caused the cut, the exclusion can only be used if the locate was accurate and all general industry practices were followed;

(B) Internet Service Provider (ISP) Blockage: If an ISP does not have enough access trunks to handle peak traffic;

(C) Modem Speed Complaints: An exclusion may be taken if the copper cable loop is tested at the subscriber location and the objective service levels in section 10 of this rule were met;

(D) No Trouble Found: Where no trouble is found, one exemption may be taken. If a repeat report of the same trouble is received within a 30-day period, the repeat report and subsequent reports must be counted;

(E) New Feature or Service: Trouble reports related to a customer's unfamiliarity with the use or operation of a new (within 30 days) feature or service;

(F) No Access: An exclusion may be taken if a repair appointment was kept and the copper based access line at the nearest accessible terminal met the objective service levels in section 10 of this rule. If a repeat trouble report is received within the following 30-day period, the repeat report and subsequent reports must be counted;

(G) Subsequent Tickets/Same Trouble/Same Access Line: Only one trouble report for a specific complaint for the same access line should be counted within a 48-hour period. All repeat trouble reports after the 48-hour period must be counted;

(H) Non-Regulated or Deregulated Equipment: Trouble associated with such equipment should not be counted;

(I) Trouble with Other Telecommunications Utilities or Competitive Telecommunications Providers: A trouble report caused solely by another telecommunications utility or competitive telecommunications provider;

(J) Lightning Strikes: Trouble reports received for damage caused by lightning strikes can be excluded if all accepted grounding, bonding, and shielding practices were followed by the small telecommunications utility at the damaged location; and

(K) Other exclusions: As approved by the Commission.

(b) Objective Service Level: A small telecommunications utility must maintain service so that the monthly trouble report rate, after approved trouble report exclusions, does not exceed:

(A) For wire centers with more than 1,000 access lines: two per 100 working access lines per wire center more than three times during a sliding 12-month period.

(B) For wire centers with 1,000 or less access lines: three per 100 working access lines per wire center more than three times during a sliding 12-month period.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission:

(A) The trouble report rate by wire center;

(B) The reason(s) a wire center meeting the standard (did not exceed the trouble report rate threshold for more than three of the last 12 months) exceeded a trouble report rate of 3.0 per 100 working access lines during the reporting month;

(C) The reason(s) a wire center not meeting the standard, after the exclusion adjustment, exceeded the trouble report rate threshold per 100 access lines during the reporting month; and

(D) The access line count for each wire center.

(d) Retention Requirement: Each small telecommunications utility must maintain a record of reported trouble in such a manner that it can be forwarded to the Commission upon the Commission's request. The small telecommunications utility must keep all records for a period of one year. The record of reported trouble must contain as a minimum the:

(A) Telephone number;

(B) Date and time received;

(C) Time cleared;

(D) Type of trouble reported;

(E) Location of trouble; and

(F) Whether or not the present trouble was within 30 days of a previous trouble report.

(6) Repair Clearing Time. This standard establishes the clearing time for all trouble reports from the time the customer reports the trouble to the small telecommunications utility until the trouble is resolved. The small telecommunications utility must provide each customer making a network trouble report with a commitment time when the small telecommunications utility will repair or resolve the problem.

(a) Measurement: The small telecommunications utility must calculate the percentage of trouble reports cleared within 48 hours for each repair center.

(b) Objective Service Level: A small telecommunications utility must monthly clear at least 95 percent of all trouble reports within 48 hours of receiving a report.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission the percentage of trouble reports cleared within 48 hours by each repair center.

(d) Retention Requirement: None.

(7) Blocked Calls. A small telecommunications utility must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of levels listed in subsection (7)(b) of this rule.

(a) Measurement:

(A) A small telecommunications utility must collect traffic data; i.e., peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups.

(B) System blockage is determined by special testing at the wire center. Commission Staff or a small telecommunications utility technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percentage of calls completed must be calculated.

(b) Objective Service Level:

(A) A small telecommunications utility must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P.01 grade of service); and

(B) A small telecommunications utility must maintain its switch operation so that 99 percent of the calls do not experience blockage during the normal busy hour.

(C) When a small telecommunications utility fails to maintain the interoffice final trunk group P.01 grade of service for four or more consecutive months, it will be considered out-of-standard until the condition is resolved. A single repeat blockage within two months of restoring the P.01 grade of service will be considered a continuation of the original blockage.

(c) Reporting Requirement: Each small telecommunications utility must report monthly to the Commission:

(A) Local and extended area service (EAS) final trunk groups that do not meet the objective service level for trunk group blockage, measured from each of its switches, regardless of the ownership of the terminating switch;

(B) Its tandem switch final trunk group blockages associated with EAS traffic;

(C) Any known cause for the blockage and actions to bring the trunks into standard; and

(D) Identity of the telecommunications utility or competitive telecommunications provider, if other than the reporting small telecommunications utility, responsible for maintaining those final trunk groups not meeting the standard.

(d) Retention Requirement: Each small telecommunications utility must maintain records for one year.

(8) Access to Small Telecommunications Utility Representatives. Small telecommunications utilities are not required to measure or report repair center and sales office access times to the Commission.

(9) Interruption of Service Notification. A small telecommunications utility must report significant outages that affect customer service. These interruptions could be caused by switch outage, electronic outage, cable cut, or construction.

(a) Measurement: A small telecommunications utility must notify the Commission when an interruption occurs that exceeds any of the following thresholds:

(A) Cable cuts, excluding service wires and wires placed in lieu of cable, or electronic outages lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(B) Toll or Extended Area Service isolation lasting longer than 30 minutes and affecting 50 percent or more of in-service lines.

(C) Isolation of a central office (host or remote) from the E 9-1-1 emergency dialing code or isolation of a Public Safety Answering Position (PSAP).

(D) Isolation of a wire center for more than 15 minutes.

(E) Outage of the business office or repair center access system lasting longer than 15 minutes in those instances where the traffic cannot be rerouted to a different center.

(b) Objective Service Level: Not applicable.

(c) Reporting Requirement: A small telecommunications utility must report service interruptions to the Commission engineering staff by telephone, by facsimile, by electronic mail, or personally within two hours during normal work hours of the business day after the company becomes aware of such interruption of service. Interim reports will be given to the Commission as significant information changes (e.g., estimated time to restore, estimated impact to customers, cause of the interruption, etc.) until it is reported that the affected service is restored.

(d) Retention Requirement: None.

(10) Customer Access Line Testing. All customer access lines must be designed, installed, and maintained to meet the levels in subsection (b) of this section.

(a) Measurement: Each small telecommunications utility must make all loop parameter measurements at the network interface, or as close as access allows.

(b) Objective Service Level: Each access line must meet the following levels:

(A) Loop Current: The serving wire center loop current, when terminated into a 400-ohm load, must be at least 20 milliamperes;

(B) Loop Loss: The maximum loop loss, as measured with a 1004-hertz tone from the serving wire center, must not exceed 8.5 decibels (dB);

(C) Metallic Noise: The maximum metallic noise level, as measured on a quiet line from the serving wire center, must not exceed 20 decibels above referenced noise level — C message weighting (dBrnC); and

(D) Power Influence: As a goal, power influence, as measured on a quiet line from the serving wire center, must not exceed 80 dBrnC.

(c) Reporting Requirement: A small telecommunications utility must report measurement readings as directed by the Commission.

(d) Retention Requirement: None.

(11) Customer Access Lines and Wire Center Switching Equipment. All combinations of access lines and wire center switching equipment must be capable of accepting and correctly processing at least the following network control signals from the customer premises equipment. The wire center must provide dial tone and maintain an actual measured loss between interoffice and access trunk groups.

(a) Measurement: Each small telecommunications utility must make measurements at or to the serving wire center;

(b) Objective Service Level:

(A) Dial Tone Speed. Ninety-eight percent of originating average busy hour call attempts must receive dial tone within three seconds; and

(B) A small telecommunications utility must maintain all interoffice and access trunk groups so that the actual measured loss (AML) in no more than 30 percent of the trunks deviates from the expected measured loss (EML) by more than 0.7 dB and no more than 4.5 percent of the trunks deviates from EML by more than 1.7 dB.

(c) Reporting Requirement: None.

(d) Retention Requirement: None.

(12) Special Service Access Lines. All special service access lines must meet the performance requirements specified in applicable small telecommunications utility tariffs or contracts.

(13) Small Telecommunications Utility Interconnectivity. A small telecommunications utility connected to the facilities of another telecommunications utility or competitive telecommunications provider must operate its system in a manner that will not impede either company's ability to meet required standards of service. A small telecommunications utility must report interconnection operational problems promptly to the Commission.

(14) Alternatives to These Telecommunications Standards. A small telecommunications utility whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules if it specifically indicates the alternative standards to be applied or indicates which standards would be waived.

(15) Remedies for Violation of This Standard.

(a) If a small telecommunications utility subject to this rule fails to meet a minimum service quality standard, the Commission must require the small telecommunications utility to submit a plan for improving performance as provided in ORS 759.450(5). If a small telecommunications utility does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, the Commission may assess penalties in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that a small telecommunications utility subject to this rule has violated one or more of its service standards, the Commission must give the small telecommunications utility notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the Commission may require the small telecommunications utility to provide the following relief to the affected customers:

(A) An alternative means of telecommunications service for violations of paragraph (4)(b)(B) of this rule;

(B) Customer billing credits equal to the associated non-recurring and recurring charges of the small telecommunications utility for the affected service for the period of the violation; and

(C) Other relief authorized by Oregon law.

(16) Exemption From These Rules.

(a) A small telecommunications utility may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption, including but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange(s), it may exempt all telecommunications utilities or competitive telecommunications providers providing telecommunications services in the exchange(s) from the requirements of this rule, in whole or in part. In making this determination, the Commission will consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Number of suppliers;

(F) Price to cost ratios;

(G) Demand side substitutability (e.g., customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a small telecommunications utility petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications utilities and competitive telecommunications providers providing the applicable service(s) in the exchange(s) in question. The Commission will provide such notified small telecommunications utilities and competitive telecommunications providers an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in paragraphs (16)(b)(A) through (H), the commenting telecommunications utilities and competitive telecommunications providers be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) The Commission may grant a small telecommunications utility's petition for an exemption from service quality reporting requirements if the small telecommunications utility meets all service quality objective service levels set forth in sections (4) through (8) of this rule for the 12 months prior to the month in which the petition is filed.

[Publications: Publications referenced are available from the agency]
Stat. Auth.: ORS 183 & 756
Stats. Implemented: ORS 759.035 & 759.240
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 23-1985, f. & ef. 12-11-85 (Order No. 85-1171);PUC 4-1997, f. & cert. ef. 1-7-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 13-2000, f. & cert. ef. 6-9-00; PUC 13-2001, f. & cert. ef. 5-25-01; PUC 7-2002, f. & cert. ef. 2-26-02; PUC 10-2005, f. & cert. ef. 12-27-05

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Real Estate Agency
Chapter 863

Adm. Order No.: REA 4-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 1-1-06 thru 6-29-06
Notice Publication Date:
Rules Adopted: 863-015-0186, 863-015-0225, 863-015-0230
Subject: This rulemaking implements HB 2604 (2005 Oregon Law, Chapter 393), passed during the 2005 Legislative Session, which requires the Real Estate Agency to adopt rules to establish a procedure for disbursal of disputed funds from a Clients' Trust Account by a sole practitioner or real estate broker; provide for the progressive discipline of real estate licensees; and to provide for an objective method for investigation of complaints alleging grounds for discipline under ORS 693.301.
Rules Coordinator: Laurie Skillman—(503) 378-4170, ext. 237

863-015-0186
Clients' Trust Accounts — Disbursal of Disputed Funds

(1) A sole practitioner or principal real estate broker may disburse disputed funds in a Clients' Trust Account using the procedures in this rule or may disburse funds in a Clients' Trust Account under the terms of a lawful contractual agreement, by law, or under the provisions of ORS Chapter 696, ORS Chapter 105, OAR 863-015-0185 or 863-025-0025;

(2) For purposes of ORS 696.241(10) and this rule, "disputed funds" are funds in a Clients' Trust Account delivered by a person to a sole practitioner or principal real estate broker pursuant to a written contract and the parties to such contract dispute the disbursal of the funds.

(3) As soon as practicable after receipt of a written demand for disbursal of funds in a Clients' Trust Account, the sole practitioner or principal real estate broker must inform all parties to the contract that a party has made demand for disbursal of such funds.

(4) If a party to the contract disputes the demand for disbursal, the sole practitioner or principal real estate broker may disburse the disputed fund to the person who delivered the funds within 20 days following the date of the demand only after providing written notice to all parties to the contract that includes substantially the following information:

(a) A party to the contract has made a demand for disbursal of funds and the sole practitioner or principal real estate broker may disburse such funds to the person who delivered the funds within 20 days following the date of the demand; and

(b) A party to the contract may wish to seek legal advice on the matter; and

(c) If the parties to the contract enter into a written agreement regarding disbursal of the disputed funds before such funds are disbursed, the sole practitioner or principal real estate broker will disburse the disputed funds according to the terms of the agreement; and

(d) The sole practitioner or principal real estate broker has no legal authority to resolve questions of law or fact regarding disputed funds in a Clients' Trust Account; and

(e) If a party has filed a legal claim to disputed funds and provides proof of such claim to the sole practitioner or principal real estate broker before the funds are disbursed, the sole practitioner or principal real estate broker is not required to disburse the funds; and

(f) The disbursal of the funds from the Clients' Trust Account to the person who delivered the funds will end the responsibility of the sole practitioner or principal real estate broker for such funds but will not affect any right or claim a person may have to such funds.

(5) Nothing in this rule shall prevent the broker from filing an action to interplead the disputed funds.

Stat. Auth.: ORS 696.385 & 2005 OL, Ch. 393
Stats. Implemented: ORS 696.026, 696.241, 696.301, 696.395 - 696.430, 696.805, 696.810, 696.990 & 696.800 - 696.855
Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06

863-015-0225
Investigation of Licensees: Procedures and Reporting

(1) The agency shall use the methods and procedures in this rule to investigate complaints that allege grounds for discipline under ORS 696.301.

(a) The commissioner or the commissioner's designee shall review the complaint to determine whether there are reasonable grounds to believe that a violation of ORS 696.007 to 696.995, or any rule promulgated thereunder, may have occurred that constitutes grounds for discipline under ORS 696.301. Reasonable grounds means a reasonable belief in facts or circumstances which, if true, would in law constitute a violation.

(b) If the commissioner or the commissioner's designee determines there are reasonable grounds to believe a violation may have occurred, an investigation will be initiated. The individual assigned to investigate the complaint shall gather all relevant facts in an objective, impartial and unbiased manner. The investigative report must contain all facts discovered during the investigation, including facts which may be exculpatory or mitigating.

(c) The individual assigned to investigate the complaint will promptly notify the commissioner or the commissioner's designee if a licensee fails or refuses to cooperate in an investigation.

(d) An investigative interview may be electronically recorded if the person to be interviewed consents to the recording and states such consent on the recording.

(e) The individual assigned to investigate the complaint may not communicate with a licensee or a member of the public about the findings of the investigation, whether a violation may have occurred based on the facts, or whether the agency will initiate administrative action against a licensee.

(f) Individuals assigned to investigate complaints shall not solicit complaints against any licensee.

(g) The scope of an investigation shall be limited to the conduct or transaction(s) that formed the basis initiating the investigation. However, if there are reasonable grounds to believe that additional violations may have occurred, the commissioner or the commissioner's designee may expand the scope of the investigation or authorize additional investigations.

(2) The investigation report shall be written in an objective manner and may not contain any conclusions about whether a violation has occurred or any recommendation regarding discipline.

(3) The commissioner's designee will review the investigation report and file and determine whether the evidence supports charging a person

under investigation with a violation of ORS 696.007 to 696.995, or any rule promulgated thereunder.

Stat. Auth.: ORS 696.385 & 2005 OL, Ch. 393
Stats. Implemented: ORS 696.026, 696.241, 696.301, 696.395 - 696.430, 696.805, 696.810, 696.990 & 696.800 - 696.855
Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06

863-015-0230
Progressive Discipline of Licensees

(1) Progressive discipline means suitable action taken by the agency against a licensee to correct the licensee's inappropriate behavior, deter the licensee from repeating the conduct, and educate the licensee to improve compliance with applicable statutes and rules. The commissioner may increase the severity of an action against a licensee for subsequent instances of inappropriate behavior.

(2) The commissioner may issue an educational letter of concern to a licensee if the commissioner determines that the licensee's conduct is a matter of concern, and such conduct does not merit disciplinary action under ORS 696.301. Such letter shall be expunged from the agency's records six years from the date of issuance.

(3) The commissioner may evaluate all relevant factors to determine whether to discipline a licensee under ORS 696.301, including but not limited to:

(a) The nature of the violation;

(b) The harm caused, if any;

(c) Whether the conduct was inadvertent or intentional;

(d) The licensee's experience and education;

(e) Whether the licensee's conduct is substantially similar to conduct or an act for which the licensee was disciplined previously;

(f) Any mitigating or aggravating circumstances;

(g) The licensee's cooperation with the investigation; and

(h) Any agency hearing orders addressing similar circumstances.

(4) The commissioner may impose suspension or revocation only if the licensee has committed an act that constitutes grounds for discipline under ORS 696.301 and such act also meets the requirements of ORS 696.396(2)(c).

Stat. Auth.: ORS 696.385 & 2005 OL, Ch. 393
Stats. Implemented: ORS 696.026, 696.241, 696.301, 696.395 - 696.430, 696.805, 696.810, 696.990 & 696.800 - 696.855
Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06

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Secretary of State, Elections Division Chapter 165

Adm. Order No.: ELECT 12-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 12-30-05
Notice Publication Date: 12-1-05
Rules Adopted: 165-010-0120
Subject: House Bill 2614 (chapter 593, 2005 Oregon Laws) provides that an elector may only participate in one nominating process for each partisan office to be filled at the general election. An individual participates by returning a partisan primary election ballot, participating in a minor political party's nominating process, signing the minutes of an assembly of electors, or by signing a certificate of nomination made by individual electors. This proposed rule adoption further defines when an elector is deemed to have participated in a nominating process for partisan office and sets forth penalties for failure to submit the required documentation. Filing officers are directed that a signature of an elector who has attempted to participate in more than one nominating process for the same office may not be counted toward satisfying the number of valid signatures required to nominate a candidate for the office by an assembly of electors or a certificate of nomination made by individual electors.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-010-0120
Prohibition Against Participating in More Than One Nominating Process

(1) An elector is deemed to have participated in the nominating process for partisan public office to be filled at the general election if:

(a) The elector returned a ballot of a major political party at the primary election, without regard to whether the elector made a selection on the ballot with regard to the office in question. The ballot need not be counted, only returned.

(b) The elector participated in a minor political party's nominating process. "Participation" is governed by the minor political party's by-laws. However, if the minor party nominates candidates by means of a nominating convention, every delegate to the convention is deemed to have participated in the nominating process.

(c) The elector signed the minutes of an assembly of electors or signed a certificate of nomination made by individual electors, and the completed nominating documents or the completed nominating petition are filed with the appropriate filing officer for certification to the ballot. With regard to these nominating processes, the elector's participation is deemed to occur at the time the nominating documents are filed with the filing officer.

(2) Each minor political party recognized by the Secretary of State's office is required to submit minutes from each nominating process held, specifically identifying the names and addresses of all electors who participated in the nominating process. Failure to comply with this requirement will result in a penalty as set forth in OAR 165-013-0020, Penalty Matrix for Other Non-Campaign Finance Civil Penalty Election Law Violations.

(3) If the filing officer determines that an elector has attempted to participate in more than one nominating process for the same office to be filled at the general election, the signature of the elector may not be counted toward satisfying the number of valid signatures required to nominate a candidate for the office by an assembly of electors or a certificate of nomination made by individual electors.

Stat. Auth.: ORS 246.150
Stats. Implemented: HB 2614, Ch. 593, 2005 OL
Hist.: ELECT 12-2005, f. & cert. ef. 12-30-05

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Adm. Order No.: ELECT 13-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 12-30-05
Notice Publication Date: 11-1-05
Rules Amended: 165-012-0005
Subject: This proposed rule amendment designates the *2006 Campaign Finance Manual* and associated forms as the procedures and guidelines used for compliance with campaign finance regulation.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-0005
Designating the Campaign Finance Manual and Forms

Pursuant to ORS 260.156, the Secretary of State designates the *2006 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

Stat. Auth.: ORS 246.120, 246.150, 260.156 & 260.200
Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200
Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert ef 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05

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Adm. Order No.: ELECT 14-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 12-30-05
Notice Publication Date: 12-1-05
Rules Adopted: 165-012-0240
Subject: House Bill 2167 (chapter 797, 2005 Oregon Laws) allows a filing officer to discontinue a political committee if it has not filed a required campaign finance report. This proposed rule adoption prescribes the criteria for a filing officer to administratively discontinue a political committee and provides a requirement for the filing officer to attempt to notify the committee of the proposed discontinuation no later than 30 days prior to administratively discontinuing the committee.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-0240
Administrative Discontinuation of a Political Committee

(1) A filing officer may administratively discontinue a political committee when all of the following criteria, if applicable, are met:

(a) The committee has failed to file two required consecutive September Supplemental Reports or, has not been active or filed other reports for two election cycles;

(b) The filing officer has attempted to contact and notify the committee of the late reports, and either the latest notification to both the candidate, if any, and treasurer has been returned as undeliverable or the filing officer for any other reason is unable to establish contact with the committee;

(c) The committee's ending cash balance on the last report filed is not more than $100; and

(d) Any outstanding loans or accounts payable are to the candidate or treasurer only.

(2) Not later than 30 days before administratively discontinuing a committee under this section, the filing officer shall attempt to notify the committee and treasurer of the proposed discontinuation by certified mail sent to the last known address of the treasurer and by regular mail to the candidate, if other than the treasurer. The notice shall inform the committee that it will be discontinued by the filing officer unless the committee informs the filing officer of reasons why the committee does not meet the criteria of this rule for administrative discontinuation within 20 days of the mailing of the notice. The written notice shall also include:

(a) Notification that the statement of organization will be administratively discontinued in 30 days; and

(b) The applicable reasons for discontinuation listed in subsection (1) of this section.

Stat. Auth.: ORS 246.150, HB 2167 (Ch. 797, Sec. 5, 2005 OL)
Stats. Implemented: HB 2167 (Ch. 797, Sec. 5, 2005 OL)
Hist.: ELECT 14-2005, f. & cert. ef. 12-30-05

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Adm. Order No.: ELECT 15-2005(Temp)
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 12-30-05 thru 4-12-06
Notice Publication Date:
Rules Suspended: 165-012-1010
Subject: This temporary rule suspends temporary rule OAR 165-012-1010 until it expires April 12, 2006. OAR 165-012-1010 prescribes the form state and local political committees use to file dedicated bank account information with the Elections Division as required by HB 3458, 2005 Or Laws, chapter 809. Unless suspended, OAR 165-012-1010 conflicts with similar but not identical requirements in OAR 165-012-0005, the 2*006 Campaign Finance Manual*, effective December 30, 2005.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-1010
Campaign Accounts

(1)(a) Subject to subsection (2) of this section, a political committee must have an account in an Oregon financial institution that is dedicated to the committee's funds and purposes. The account must be held in the name of the committee and the name may not use or contain acronyms.

(b) All moneys received by a committee must either be deposited into the campaign account or returned to the contributor within seven calendar days of receipt. No funds of any individual or other entity shall be deposited in the campaign account.

(c) All moneys expended by a committee must be spent through the campaign account. All expenditures must be by written instrument signed by the candidate or the treasurer or by use of a credit card or other form of electronic transaction. A person may make an expenditure on behalf of a committee by cash or other means and be subsequently reimbursed by the committee from this account.

(d) Moneys in the account may be transferred into money market funds, savings accounts, certificates of deposits, or other means of investment, provided that such investments, when subsequently converted, are redeposited in the campaign account. The investments do not need to be sited in the state of Oregon.

(2)(a) A candidate who acts as the candidate's own treasurer and neither receives more than $300 in total contributions nor makes total expenditures in excess of $300 in an election does not need to establish an account under this rule.

(b) Existing committees shall establish an account under this section no later than December 31, 2005.

(c) A political committee attempting to form after December 31, 2005, shall have 3 business days after first receiving a contribution or making an expenditure, whichever is sooner, to establish an account as required under this section.

(3) The form SEL 223, "Campaign Account Information", is designated the form used by a committee to file the required account information with the appropriate filing officer.

(4) Committees in existence as of December 31, 2005, shall file a completed SEL 223 with the appropriate filing officer no later than January 3, 2006.

(5) After December 31, 2005, a new committee must file a completed SEL 223 with its Statement of Organization for Candidate Committee (SEL 220) or Statement of Organization for Political Action Committee (SEL 221) in order to have filed a completed statement of organization and be a political committee.

(6) The information contained in a SEL 223 is exempt from public disclosure and shall be kept confidential by the filing officer. The filing officer shall retain account information in a SEL 223 separately from the information in the remainder of the committee's statement of organization (SEL 220 or SEL 221), and shall limit access to that information by personnel of the filing officer to the extent practicable. The account information may only be disclosed to other governmental agencies in enforcing the provisions of ORS chapters 246 to 260 and, if so disclosed, shall remain otherwise confidential.

(7) Penalties for violation of ORS 260.XXX or 260.XXY, as provided in this rule, are set forth in OAR 165-013-0010, Penalty Matrix for Other Campaign Finance Violations.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.200, HB 3458, ch 809 OL 2005
Hist.: ELECT 6-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; Suspended by ELECT 15-2005(Temp), f. & cert. ef. 12-30-05 thru 4-12-06

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Adm. Order No.: ELECT 16-2005
Filed with Sec. of State: 12-30-2005
Certified to be Effective: 12-30-05
Notice Publication Date: 11-1-05
Rules Amended: 165-013-0010, 165-013-0020
Subject: 165-013-0010: This rule amendment is proposed to incorporate into the Penalty Matrix for Campaign Finance Civil Penalty Election Law Violations, civil penalties for a political committees failing to establish a dedicated account within three business days, a political committee failing to file with filing officer account information within three business days, and a candidate committee compensating a candidate for professional services. Additionally penalties are increased for a candidate who uses campaign funds for personal use.

165-013-0020: This rule amendment is proposed to remove from the Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations the requirement for a penalty to be paid to a local jurisdiction for violations of ORS 260.432(1), 260.432(2), and 260.432(3). Additionally this amendment would remove the penalty for violating ORS 260.605, 260.625, and 260.655.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0010
Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2) Mitigating Circumstances. The only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

(d) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional char-

acter, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight); or

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax).

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) The penalty amount for a violation will be calculated against the same candidate or treasurer for a period based on the number of violations by the candidate or treasurer of the same offense in the two years preceding the date the violation occurs.

(c) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.232
Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 1-2004, f. & cert. ef. 2-13-04; ELECT 16-2005, f. & cert. ef. 12-30-05

165-013-0020
Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

(1)(a) This penalty matrix applies to civil penalties for violations of election laws that are not covered by the penalty matrices in the Campaign Finance Manual (late and insufficient campaign finance reports and new transactions to campaign finance reports), or other campaign finance violations as outlined in 165-013-0010.

(b) The penalty amount will be calculated against the same person, candidate or entity as described below for a period of four years from the date the violation occurs, for any election law violation, other than campaign finance violations covered in the penalty matrices in the Campaign Finance Manual and other campaign finance violations as outlined in 165-013-0010. In determining whether the offense is to be considered against the same person, candidate or entity, the following factors are to be considered:

(A) A person is considered the same candidate, regardless of the office(s) for which the person runs within this state, or whether there is a lapse in time between candidacies.

(B) A political committee is considered the same, regardless of who the treasurer is, or if the political committee has changed names but is established by the same group of persons.

(C) The same individual.

(D) One occurrence is considered one violation.

(E) Not withstanding (F), if a violation is the first on record for the person, and multiple occurrences of the same statutory provision are described in an election law complaint, the occurrences will be combined (to be considered as one violation) and considered a first violation of the statutory provision, except in such cases where specific circumstances warrant separating the occurrences to impose fines for each violation. This would be appropriate when different persons were affected by the election law offense. Each subsequent occurrence of violation of the same statutory provision after the issuance of a notification letter or a determination of election law violation, within the four-year cycle, may be considered as separate violations.

(F) Violations of Article IV, Section 1(b) will be calculated by deeming each individual signature sheet that contains signatures that were collected in violation of Section 1(b) as a single occurrence with a minimum civil penalty of $100.

(2) Mitigating Circumstances: The burden is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation. The only mitigating circumstances which will be considered, if applicable to the specific situation, include:

(a) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by an elections officer;

(c) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(d) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the governing body's legal counsel before its distribution. The legal counsel must have advised the governing body in writing that the publication as distributed was impartial information that the governing body could legally produce and distribute, and was not in violation of election law;

(e) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the Secretary of State's office, Elections Division, in consultation with legal counsel from the Attorney General's office, before its publication. The Secretary of State must have advised the governing body in writing that the publication as drafted was impartial information that the governing could legally produce and distribute or for which suggestions were provided towards the goal of assuring the publication was impartial information regarding the ballot measure. If the Secretary of State issued an advice letter with suggested changes, the governing body must have substantially followed the advice provided. However, this mitigating factor may be disallowed, even if such an advice letter was issued, if a complaint and investigation indicates sufficient evidence that the public body presented inaccurate or unbalanced information, not within the purview of this office to have knowledge of prior to the complaint, which has the effect of promoting or opposing the adoption of the measure;

(f) The violation of ORS 260.432(2) occurred, but the public employee had voiced their objection to the person who coerced, commanded or required the employee to perform the prohibited campaign activity during their work time. Despite the stated objection, the person was still required to perform the activity that violated ORS 260.432(2); or

(g) The violation of ORS 260.432(2) occurred when a supervisor asked the public employee to perform the prohibited campaign activity, consisting of clerical tasks, as a part of the public employee's job duties during work time. A "request" made by a supervisor is considered a command or requirement within the meaning of ORS 260.432(1). If the violation involves a written document, the public employee performed clerical tasks only and is not the author of the material.

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

(b) For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, Appendix B of this rule will apply.

[ED. NOTE: Appendices referenced is available from the agency.]
Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.995
Hist.: ELECT 14-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 16-2005, f. & cert. ef. 12-30-05

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Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Changes experience requirement to supervise student teachers under certain conditions.
Adm. Order No.: TSPC 1-2006(Temp)
Filed with Sec. of State: 1-3-2006
Certified to be Effective: 1-3-06 thru 6-30-06
Notice Publication Date:
Rules Amended: 584-017-0070
Subject: OAR 584-017-0070: School-Based Personnel for the Program: Allows school-based supervisors with less than three full years of experience to supervise student teaching or other practica experiences if they are jointly deemed to be qualified by the school administration and the college or university program staff. Currently a school-based supervisor must have at least three full years of teaching to supervise a student teacher or other practica experience.
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-0070
School-Based Personnel for the Program

The unit provides qualified school-based personnel for the program.

(1) The unit has policies for supervision of practica and student teaching experiences that state the responsibilities of the institutional supervisor and the school based supervisor and administrator.

(2) The unit selects qualified school based supervisors who have had three years experience in early childhood, or elementary, or middle or high school immediately prior to supervision and/or instruction and who hold a valid license for current assignments.

(3) The unit may select a school-based supervisor in the third year of teaching if the unit and the district administration agree in writing that the school-based supervisor is qualified.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 1-2006(Temp), f. & cert. ef. 1-3-06 thru 1-30-06

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137-049-0650	1-1-06	Amend	2-1-06
137-049-0660	1-1-06	Amend	2-1-06
137-049-0670	1-1-06	Amend	2-1-06
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137-049-0870	1-1-06	Amend	2-1-06
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137-055-1140	1-3-06	Amend	2-1-06
137-055-1140(T)	1-3-06	Repeal	2-1-06
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137-055-1160	1-3-06	Amend	2-1-06
137-055-1160(T)	1-3-06	Repeal	2-1-06
137-055-1180	1-3-06	Amend	2-1-06
137-055-1180(T)	1-3-06	Repeal	2-1-06
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137-055-3060	1-3-06	Amend(T)	2-1-06
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137-055-3220	1-3-06	Amend	2-1-06
137-055-3240	1-3-06	Amend	2-1-06
137-055-3240(T)	1-3-06	Repeal	2-1-06
137-055-3280	1-3-06	Amend	2-1-06
137-055-3400	1-3-06	Amend	2-1-06
137-055-3420	1-3-06	Amend	2-1-06
137-055-3420(T)	1-3-06	Repeal	2-1-06
137-055-3430	1-3-06	Amend	2-1-06
137-055-3430(T)	1-3-06	Repeal	2-1-06
137-055-3440	1-3-06	Amend	2-1-06
137-055-3440(T)	1-3-06	Repeal	2-1-06
137-055-3480	1-3-06	Amend	2-1-06
137-055-3490	1-3-06	Amend	2-1-06
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137-055-3640	1-3-06	Amend	2-1-06
137-055-3660	1-3-06	Amend	2-1-06
137-055-4060	1-3-06	Amend	2-1-06
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137-055-4560	1-3-06	Amend	2-1-06
137-055-5020	1-3-06	Amend	2-1-06
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137-055-5110	1-3-06	Amend	2-1-06
137-055-5110(T)	1-3-06	Repeal	2-1-06
137-055-5120	1-3-06	Amend	2-1-06
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137-055-5520	1-3-06	Amend	2-1-06
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177-085-0065(T)	12-31-05	Repeal	2-1-06
177-200-0020	12-31-05	Amend	2-1-06
177-200-0020(T)	12-31-05	Repeal	2-1-06
220-005-0005	12-30-05	Amend(T)	2-1-06
220-005-0010	12-30-05	Amend(T)	2-1-06
220-005-0015	12-30-05	Amend(T)	2-1-06
220-005-0110	12-30-05	Amend(T)	2-1-06
220-005-0115	12-30-05	Amend(T)	2-1-06
220-005-0120	12-30-05	Amend(T)	2-1-06
220-005-0130	12-30-05	Amend(T)	2-1-06
220-005-0135	12-30-05	Amend(T)	2-1-06
220-005-0140	12-30-05	Amend(T)	2-1-06
220-005-0150	12-30-05	Amend(T)	2-1-06
220-005-0160	12-30-05	Amend(T)	2-1-06
220-005-0170	12-30-05	Amend(T)	2-1-06
220-005-0210	12-30-05	Amend(T)	2-1-06
220-005-0220	12-30-05	Amend(T)	2-1-06
220-005-0225	12-30-05	Adopt(T)	2-1-06
220-005-0230	12-30-05	Suspend	2-1-06
220-005-0240	12-30-05	Suspend	2-1-06
220-005-0245	12-30-05	Adopt(T)	2-1-06
220-005-0250	12-30-05	Amend(T)	2-1-06
220-010-0020	12-30-05	Amend(T)	2-1-06
220-010-0030	12-30-05	Amend(T)	2-1-06
220-010-0050	12-30-05	Amend(T)	2-1-06
220-010-0060	12-30-05	Amend(T)	2-1-06
220-010-0200	12-30-05	Suspend	2-1-06
220-010-0300	12-30-05	Amend(T)	2-1-06
220-030-0035	12-30-05	Amend(T)	2-1-06
220-040-0015	12-30-05	Amend(T)	2-1-06
220-040-0025	12-30-05	Suspend	2-1-06
220-040-0035	12-30-05	Amend(T)	2-1-06
220-040-0045	12-30-05	Amend(T)	2-1-06
220-040-0050	12-30-05	Amend(T)	2-1-06
220-050-0105	12-30-05	Suspend	2-1-06
220-050-0110	12-30-05	Amend(T)	2-1-06
220-050-0140	12-30-05	Amend(T)	2-1-06
220-050-0150	12-30-05	Suspend	2-1-06
220-050-0300	12-30-05	Amend(T)	2-1-06
250-016-0012	1-1-06	Adopt	2-1-06
255-075-0035	12-29-05	Amend	2-1-06
257-050-0020	11-18-05	Adopt	1-1-06
257-050-0040	11-18-05	Amend	1-1-06
257-050-0070	11-18-05	Amend	1-1-06
257-050-0080	11-18-05	Repeal	1-1-06
257-050-0090	11-18-05	Amend	1-1-06
257-050-0120	11-18-05	Repeal	1-1-06
257-050-0125	11-18-05	Adopt	1-1-06
257-050-0140	11-18-05	Amend	1-1-06
257-050-0145	11-18-05	Adopt	1-1-06
257-050-0150	11-18-05	Amend	1-1-06
257-050-0157	11-18-05	Adopt	1-1-06
257-050-0160	11-18-05	Repeal	1-1-06
257-050-0170	11-18-05	Adopt	1-1-06
257-050-0200	11-18-05	Adopt	1-1-06
259-008-0076	12-7-05	Adopt	1-1-06
274-020-0340	12-27-05	Amend	2-1-06
274-030-0600	12-23-05	Adopt(T)	2-1-06
274-030-0605	12-23-05	Adopt(T)	2-1-06
274-030-0610	12-23-05	Adopt(T)	2-1-06
274-030-0615	12-23-05	Adopt(T)	2-1-06
274-030-0620	12-23-05	Adopt(T)	2-1-06
274-030-0621	12-23-05	Adopt(T)	2-1-06
274-030-0630	12-23-05	Adopt(T)	2-1-06
274-030-0640	12-23-05	Adopt(T)	2-1-06
274-045-0060	12-27-05	Amend	2-1-06
291-047-0005	1-1-06	Amend	2-1-06
291-047-0010	1-1-06	Amend	2-1-06
291-047-0020	1-1-06	Repeal	2-1-06
291-047-0021	1-1-06	Adopt	2-1-06
291-047-0025	1-1-06	Repeal	2-1-06
291-047-0061	1-1-06	Adopt	2-1-06
291-047-0065	1-1-06	Adopt	2-1-06
291-047-0070	1-1-06	Adopt	2-1-06
291-047-0075	1-1-06	Adopt	2-1-06
291-047-0080	1-1-06	Adopt	2-1-06
291-047-0085	1-1-06	Adopt	2-1-06
291-047-0090	1-1-06	Adopt	2-1-06
291-047-0095	1-1-06	Adopt	2-1-06
291-047-0100	1-1-06	Adopt	2-1-06
291-047-0105	1-1-06	Adopt	2-1-06
291-047-0110	1-1-06	Adopt	2-1-06
291-047-0115	1-1-06	Am. & Ren.	2-1-06
291-047-0120	1-1-06	Am. & Ren.	2-1-06
291-047-0125	1-1-06	Am. & Ren.	2-1-06
291-047-0130	1-1-06	Am. & Ren.	2-1-06
291-047-0135	1-1-06	Am. & Ren.	2-1-06
291-047-0140	1-1-06	Am. & Ren.	2-1-06
291-063-0010	1-1-06	Amend	2-1-06
291-063-0016	1-1-06	Amend	2-1-06
291-063-0030	1-1-06	Amend	2-1-06
291-063-0050	1-1-06	Amend	2-1-06
291-104-0010	12-7-05	Amend	1-1-06
291-104-0015	12-7-05	Amend	1-1-06
291-104-0030	12-7-05	Amend	1-1-06
291-104-0035	12-7-05	Amend	1-1-06
309-120-0000(T)	1-1-06	Repeal	2-1-06
309-120-0005(T)	1-1-06	Repeal	2-1-06
309-120-0015	1-1-06	Repeal	2-1-06
309-120-0020	1-1-06	Repeal	2-1-06
309-120-0021(T)	1-1-06	Repeal	2-1-06
309-120-0070	1-1-06	Adopt	2-1-06
309-120-0070(T)	1-1-06	Repeal	2-1-06
309-120-0075	1-1-06	Adopt	2-1-06
309-120-0075(T)	1-1-06	Repeal	2-1-06
309-120-0080	1-1-06	Adopt	2-1-06
309-120-0080(T)	1-1-06	Repeal	2-1-06
309-120-0200	1-1-06	Am. & Ren.	2-1-06
309-120-0205	1-1-06	Am. & Ren.	2-1-06

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309-120-0215	1-1-06	Adopt	2-1-06
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309-120-0225	1-1-06	Adopt	2-1-06
309-120-0230	1-1-06	Adopt	2-1-06
309-120-0235	1-1-06	Adopt	2-1-06
309-120-0240	1-1-06	Adopt	2-1-06
309-120-0245	1-1-06	Adopt	2-1-06
309-120-0250	1-1-06	Adopt	2-1-06
309-120-0255	1-1-06	Adopt	2-1-06
309-120-0260	1-1-06	Adopt	2-1-06
309-120-0265	1-1-06	Adopt	2-1-06
309-120-0270	1-1-06	Am. & Ren.	2-1-06
309-120-0275	1-1-06	Am. & Ren.	2-1-06
309-120-0280	1-1-06	Am. & Ren.	2-1-06
309-120-0285	1-1-06	Am. & Ren.	2-1-06
309-120-0290	1-1-06	Am. & Ren.	2-1-06
309-120-0295	1-1-06	Am. & Ren.	2-1-06
330-070-0010	1-1-06	Amend	2-1-06
330-070-0013	1-1-06	Amend	2-1-06
330-070-0014	1-1-06	Amend	2-1-06
330-070-0020	1-1-06	Amend	2-1-06
330-070-0021	1-1-06	Amend	2-1-06
330-070-0022	1-1-06	Amend	2-1-06
330-070-0025	1-1-06	Amend	2-1-06
330-070-0026	1-1-06	Amend	2-1-06
330-070-0040	1-1-06	Amend	2-1-06
330-070-0045	1-1-06	Amend	2-1-06
330-070-0048	1-1-06	Amend	2-1-06
330-070-0055	1-1-06	Amend	2-1-06
330-070-0059	1-1-06	Amend	2-1-06
330-070-0060	1-1-06	Amend	2-1-06
330-070-0062	1-1-06	Amend	2-1-06
330-070-0063	1-1-06	Amend	2-1-06
330-070-0064	1-1-06	Amend	2-1-06
330-070-0073	1-1-06	Amend	2-1-06
330-070-0089	1-1-06	Amend	2-1-06
330-070-0097	1-1-06	Amend	2-1-06
330-090-0105	1-1-06	Amend	2-1-06
330-090-0110	1-1-06	Amend	2-1-06
330-090-0120	1-1-06	Amend	2-1-06
330-090-0130	1-1-06	Amend	2-1-06
331-405-0020	1-1-06	Amend	1-1-06
331-405-0030	1-1-06	Amend	1-1-06
331-405-0045	1-1-06	Adopt	1-1-06
331-410-0000	1-1-06	Amend	1-1-06
331-410-0010	1-1-06	Amend	1-1-06
331-410-0020	1-1-06	Amend	1-1-06
331-410-0030	1-1-06	Amend	1-1-06
331-410-0040	1-1-06	Amend	1-1-06
333-008-0000	1-1-06	Amend	2-1-06
333-008-0010	1-1-06	Amend	2-1-06
333-008-0020	12-1-05	Amend	1-1-06
333-008-0020	1-1-06	Amend	2-1-06
333-008-0025	1-1-06	Adopt	2-1-06
333-008-0030	1-1-06	Amend	2-1-06
333-008-0040	1-1-06	Amend	2-1-06
333-008-0050	1-1-06	Amend	2-1-06
333-008-0060	1-1-06	Amend	2-1-06
333-008-0070	1-1-06	Amend	2-1-06
333-008-0080	1-1-06	Amend	2-1-06
333-008-0090	1-1-06	Amend	2-1-06
333-008-0110	1-1-06	Adopt	2-1-06
333-008-0120	1-1-06	Adopt	2-1-06
333-012-0265	1-1-06	Amend(T)	2-1-06
333-018-0030	1-1-06	Amend(T)	2-1-06
333-019-0036	1-1-06	Amend	2-1-06
333-025-0100	1-1-06	Amend	2-1-06
333-025-0105	1-1-06	Amend	2-1-06
333-025-0110	1-1-06	Amend	2-1-06
333-025-0115	1-1-06	Amend	2-1-06
333-025-0120	1-1-06	Amend	2-1-06
333-025-0135	1-1-06	Amend	2-1-06
333-025-0140	1-1-06	Amend	2-1-06
333-025-0160	1-1-06	Amend	2-1-06
333-025-0165	1-1-06	Adopt	2-1-06
333-510-0045	1-1-06	Amend(T)	2-1-06
334-010-0010	1-5-06	Amend	2-1-06
334-010-0015	1-5-06	Amend	2-1-06
334-010-0017	1-5-06	Amend	2-1-06
334-010-0033	1-5-06	Amend	2-1-06
334-010-0050	1-5-06	Amend	2-1-06
340-045-0033	12-28-05	Amend	2-1-06
340-257-0010	1-1-06	Adopt(T)	2-1-06
340-257-0020	1-1-06	Adopt(T)	2-1-06
340-257-0030	1-1-06	Adopt(T)	2-1-06
340-257-0040	1-1-06	Adopt(T)	2-1-06
340-257-0050	1-1-06	Adopt(T)	2-1-06
340-257-0060	1-1-06	Adopt(T)	2-1-06
340-257-0070	1-1-06	Adopt(T)	2-1-06
340-257-0080	1-1-06	Adopt(T)	2-1-06
340-257-0090	1-1-06	Adopt(T)	2-1-06
340-257-0100	1-1-06	Adopt(T)	2-1-06
340-257-0110	1-1-06	Adopt(T)	2-1-06
340-257-0120	1-1-06	Adopt(T)	2-1-06
340-257-0130	1-1-06	Adopt(T)	2-1-06
340-257-0150	1-1-06	Adopt(T)	2-1-06
340-257-0160	1-1-06	Adopt(T)	2-1-06
407-050-0000	11-28-05	Adopt(T)	1-1-06
407-050-0005	11-28-05	Adopt(T)	1-1-06
407-050-0010	11-28-05	Adopt(T)	1-1-06
410-011-0000	1-1-06	Am. & Ren.	1-1-06
410-011-0010	1-1-06	Am. & Ren.	1-1-06
410-011-0020	1-1-06	Am. & Ren.	1-1-06
410-011-0030	1-1-06	Am. & Ren.	1-1-06
410-011-0040	1-1-06	Am. & Ren.	1-1-06
410-011-0050	1-1-06	Am. & Ren.	1-1-06
410-011-0060	1-1-06	Am. & Ren.	1-1-06
410-011-0070	1-1-06	Am. & Ren.	1-1-06
410-011-0080	1-1-06	Am. & Ren.	1-1-06
410-011-0090	1-1-06	Am. & Ren.	1-1-06
410-011-0100	1-1-06	Am. & Ren.	1-1-06

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410-011-0110	1-1-06	Am. & Ren.	1-1-06
410-011-0120	1-1-06	Am. & Ren.	1-1-06
410-120-0000	1-1-06	Amend	1-1-06
410-120-0250	1-1-06	Amend	2-1-06
410-120-1200	1-1-06	Amend	1-1-06
410-120-1210	1-1-06	Amend	1-1-06
410-120-1280	1-1-06	Amend	2-1-06
410-120-1295	1-1-06	Amend	1-1-06
410-120-1295	1-1-06	Amend(T)	1-1-06
410-120-1295	1-1-06	Amend(T)	2-1-06
410-120-1295(T)	1-1-06	Repeal	1-1-06
410-121-0147	1-1-06	Amend	1-1-06
410-121-0190	12-1-05	Amend	1-1-06
410-121-0300	1-1-06	Amend	2-1-06
410-121-0320	1-1-06	Amend	2-1-06
410-122-0190	12-1-05	Amend	1-1-06
410-125-0090	1-1-06	Amend	2-1-06
410-125-0141	1-1-06	Amend	2-1-06
410-125-0181	1-1-06	Amend	2-1-06
410-125-0190	1-1-06	Amend	2-1-06
410-125-0195	1-1-06	Amend	2-1-06
410-125-0201	1-1-06	Amend	2-1-06
410-125-0210	1-1-06	Amend	2-1-06
410-125-1020	1-1-06	Amend	2-1-06
410-125-1060	1-1-06	Amend	2-1-06
410-132-0140	12-1-05	Repeal	1-1-06
410-136-0420	12-1-05	Amend	1-1-06
410-140-0320	12-1-05	Amend	1-1-06
410-140-0400	12-1-05	Amend	1-1-06
410-141-0000	1-1-06	Amend	1-1-06
410-141-0060	1-1-06	Amend	1-1-06
410-141-0070	1-1-06	Amend	1-1-06
410-141-0080	1-1-06	Amend	1-1-06
410-141-0120	1-1-06	Amend	1-1-06
410-141-0160	1-1-06	Amend	1-1-06
410-141-0220	1-1-06	Amend	1-1-06
410-141-0520	12-1-05	Amend	1-1-06
410-141-0520	1-1-06	Amend	2-1-06
410-146-0100	12-1-05	Amend	1-1-06
410-147-0365	1-1-06	Amend	1-1-06
411-015-0005	12-29-05	Amend	2-1-06
411-015-0100	12-29-05	Amend	2-1-06
411-018-0000	12-12-05	Amend	1-1-06
411-018-0010	12-12-05	Amend	1-1-06
411-018-0020	12-12-05	Amend	1-1-06
411-030-0020	12-21-05	Amend(T)	2-1-06
411-030-0033	12-21-05	Amend(T)	2-1-06
411-030-0040	12-21-05	Amend(T)	2-1-06
411-030-0040	1-13-06	Amend(T)	2-1-06
411-030-0050	12-21-05	Amend(T)	2-1-06
411-030-0055	12-21-05	Adopt(T)	2-1-06
411-030-0070	12-21-05	Amend(T)	2-1-06
411-031-0020	11-16-05	Amend(T)	1-1-06
411-031-0050	11-16-05	Amend(T)	1-1-06
411-320-0020	11-23-05	Amend(T)	1-1-06
411-320-0030	11-23-05	Amend(T)	1-1-06
411-320-0040	11-23-05	Amend(T)	1-1-06
411-320-0050	11-23-05	Amend(T)	1-1-06
411-320-0070	11-23-05	Amend(T)	1-1-06
411-320-0080	11-23-05	Amend(T)	1-1-06
411-320-0090	11-23-05	Amend(T)	1-1-06
411-320-0100	11-23-05	Amend(T)	1-1-06
411-320-0110	11-23-05	Amend(T)	1-1-06
411-320-0120	11-23-05	Amend(T)	1-1-06
411-320-0130	11-23-05	Amend(T)	1-1-06
411-320-0140	11-23-05	Amend(T)	1-1-06
411-320-0160	11-23-05	Amend(T)	1-1-06
411-320-0170	11-23-05	Amend(T)	1-1-06
413-015-0115	1-1-06	Amend(T)	2-1-06
413-015-0200	12-1-05	Amend	1-1-06
413-015-0205	12-1-05	Amend	1-1-06
413-015-0210	12-1-05	Amend	1-1-06
413-015-0211	12-1-05	Adopt	1-1-06
413-015-0212	12-1-05	Adopt	1-1-06
413-015-0213	12-1-05	Adopt	1-1-06
413-015-0215	12-1-05	Amend	1-1-06
413-015-0220	12-1-05	Amend	1-1-06
413-015-0300	1-1-06	Amend(T)	2-1-06
413-015-0302	1-1-06	Adopt(T)	2-1-06
413-015-0305	1-1-06	Amend(T)	2-1-06
413-015-0310	1-1-06	Amend(T)	2-1-06
413-015-0405	1-1-06	Amend(T)	2-1-06
413-015-0720	1-1-06	Amend(T)	2-1-06
413-015-0900	1-1-06	Amend(T)	2-1-06
413-015-1000	1-1-06	Amend(T)	2-1-06
413-050-0100	1-1-06	Repeal	2-1-06
413-050-0110	1-1-06	Repeal	2-1-06
413-050-0120	1-1-06	Repeal	2-1-06
413-050-0130	1-1-06	Repeal	2-1-06
413-050-0140	1-1-06	Repeal	2-1-06
413-080-0100	1-1-06	Repeal	2-1-06
413-080-0110	1-1-06	Repeal	2-1-06
413-080-0120	1-1-06	Repeal	2-1-06
413-080-0130	1-1-06	Repeal	2-1-06
413-080-0140	1-1-06	Repeal	2-1-06
413-080-0150	1-1-06	Repeal	2-1-06
413-130-0010	1-1-06	Amend(T)	2-1-06
413-130-0080	1-1-06	Amend(T)	2-1-06
413-140-0010	1-1-06	Amend(T)	2-1-06
413-140-0030	1-1-06	Amend(T)	2-1-06
414-061-0080	1-1-06	Amend	2-1-06
414-350-0000	1-1-06	Amend(T)	2-1-06
414-350-0010	1-1-06	Amend(T)	2-1-06
414-350-0020	1-1-06	Amend(T)	2-1-06
414-350-0030	1-1-06	Amend(T)	2-1-06
414-350-0050	1-1-06	Amend(T)	2-1-06
414-350-0100	1-1-06	Amend(T)	2-1-06
414-350-0120	1-1-06	Amend(T)	2-1-06
414-350-0140	1-1-06	Amend(T)	2-1-06
414-350-0160	1-1-06	Amend(T)	2-1-06
414-350-0170	1-1-06	Amend(T)	2-1-06
414-350-0220	1-1-06	Amend(T)	2-1-06

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414-700-0060	12-15-05	Amend(T)	1-1-06
416-425-0000	11-22-05	Adopt	1-1-06
416-425-0010	11-22-05	Adopt	1-1-06
416-425-0020	11-22-05	Adopt	1-1-06
436-001-0003	1-17-06	Amend	2-1-06
436-001-0005	1-17-06	Amend	2-1-06
436-010-0005	1-1-06	Amend	1-1-06
436-010-0008	1-1-06	Amend	1-1-06
436-010-0210	1-1-06	Amend	1-1-06
436-010-0220	1-1-06	Amend	1-1-06
436-010-0230	1-1-06	Amend	1-1-06
436-010-0240	1-1-06	Amend	1-1-06
436-010-0250	1-1-06	Amend	1-1-06
436-010-0265	1-1-06	Amend	1-1-06
436-010-0270	1-1-06	Amend	1-1-06
436-010-0280	1-1-06	Amend	1-1-06
436-010-0290	1-1-06	Amend	1-1-06
436-010-0300	1-1-06	Amend	1-1-06
436-010-0340	1-1-06	Amend	1-1-06
436-015-0008	1-1-06	Amend	1-1-06
436-015-0030	1-1-06	Amend	1-1-06
436-015-0040	1-1-06	Amend	1-1-06
436-015-0070	1-1-06	Amend	1-1-06
436-015-0080	1-1-06	Amend	1-1-06
436-015-0110	1-1-06	Amend	1-1-06
436-030-0003	1-1-06	Amend	1-1-06
436-030-0005	1-1-06	Amend	1-1-06
436-030-0007	1-1-06	Amend	1-1-06
436-030-0009	1-1-06	Amend	1-1-06
436-030-0015	1-1-06	Amend	1-1-06
436-030-0020	1-1-06	Amend	1-1-06
436-030-0023	1-1-06	Amend	1-1-06
436-030-0034	1-1-06	Amend	1-1-06
436-030-0055	1-1-06	Amend	1-1-06
436-030-0065	1-1-06	Amend	1-1-06
436-030-0115	1-1-06	Amend	1-1-06
436-030-0155	1-1-06	Amend	1-1-06
436-030-0165	1-1-06	Amend	1-1-06
436-030-0175	1-1-06	Amend	1-1-06
436-030-0185	1-1-06	Amend	1-1-06
436-030-0575	1-1-06	Amend	1-1-06
436-030-0580	1-1-06	Amend	1-1-06
436-035-0005	1-1-06	Amend	1-1-06
436-035-0007	1-1-06	Amend	1-1-06
436-035-0008	1-1-06	Amend	1-1-06
436-035-0009	1-1-06	Amend	1-1-06
436-035-0011	1-1-06	Amend	1-1-06
436-035-0012	1-1-06	Amend	1-1-06
436-035-0016	1-1-06	Amend	1-1-06
436-035-0017	1-1-06	Amend	1-1-06
436-035-0019	1-1-06	Amend	1-1-06
436-035-0110	1-1-06	Amend	1-1-06
436-035-0190	1-1-06	Amend	1-1-06
436-035-0230	1-1-06	Amend	1-1-06
436-035-0330	1-1-06	Amend	1-1-06
436-035-0340	1-1-06	Amend	1-1-06
436-035-0350	1-1-06	Amend	1-1-06
436-035-0360	1-1-06	Amend	1-1-06
436-035-0380	1-1-06	Amend	1-1-06
436-035-0390	1-1-06	Amend	1-1-06
436-035-0395	1-1-06	Amend	1-1-06
436-035-0400	1-1-06	Amend	1-1-06
436-035-0410	1-1-06	Amend	1-1-06
436-035-0420	1-1-06	Amend	1-1-06
436-035-0430	1-1-06	Amend	1-1-06
436-035-0500	1-1-06	Amend	1-1-06
436-050-0003	1-1-06	Amend	1-1-06
436-050-0008	1-1-06	Amend	1-1-06
436-050-0100	1-1-06	Amend	1-1-06
436-050-0110	1-1-06	Amend	1-1-06
436-050-0170	1-1-06	Amend	1-1-06
436-050-0220	1-1-06	Amend	1-1-06
436-050-0230	1-1-06	Amend	1-1-06
436-055-0070	1-1-06	Amend	1-1-06
436-055-0085	1-1-06	Adopt	1-1-06
436-055-0100	1-1-06	Amend	1-1-06
436-060-0002	1-1-06	Amend	1-1-06
436-060-0008	1-1-06	Amend	1-1-06
436-060-0009	1-1-06	Amend	1-1-06
436-060-0010	1-1-06	Amend	1-1-06
436-060-0015	1-1-06	Amend	1-1-06
436-060-0017	1-1-06	Amend	1-1-06
436-060-0020	1-1-06	Amend	1-1-06
436-060-0025	1-1-06	Amend	1-1-06
436-060-0030	1-1-06	Amend	1-1-06
436-060-0035	1-1-06	Amend	1-1-06
436-060-0040	1-1-06	Amend	1-1-06
436-060-0055	1-1-06	Amend	1-1-06
436-060-0060	1-1-06	Amend	1-1-06
436-060-0095	1-1-06	Amend	1-1-06
436-060-0105	1-1-06	Amend	1-1-06
436-060-0135	1-1-06	Amend	1-1-06
436-060-0137	1-1-06	Adopt	1-1-06
436-060-0140	1-1-06	Amend	1-1-06
436-060-0147	1-1-06	Amend	1-1-06
436-060-0150	1-1-06	Amend	1-1-06
436-060-0155	1-1-06	Amend	1-1-06
436-060-0180	1-1-06	Amend	1-1-06
436-060-0190	1-1-06	Amend	1-1-06
436-060-0200	1-1-06	Amend	1-1-06
436-060-0500	1-1-06	Amend	1-1-06
436-060-0510	1-1-06	Adopt	1-1-06
436-105-0500	1-1-06	Amend	1-1-06
436-110-0002	1-1-06	Amend	1-1-06
436-110-0005	1-1-06	Amend	1-1-06
436-110-0310	1-1-06	Amend	1-1-06
436-110-0326	1-1-06	Amend	1-1-06
436-110-0327	1-1-06	Amend	1-1-06
436-110-0335	1-1-06	Amend	1-1-06
436-110-0337	1-1-06	Amend	1-1-06

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437-002-0260	12-14-05	Amend	1-1-06
437-002-0280	12-14-05	Amend	1-1-06
437-002-0300	12-14-05	Amend	1-1-06
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441-750-0020	1-9-06	Repeal	2-1-06
441-750-0030	1-9-06	Repeal	2-1-06
441-750-0040	1-9-06	Repeal	2-1-06
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441-780-0040	1-9-06	Repeal	2-1-06
441-780-0050	1-9-06	Repeal	2-1-06
441-780-0060	1-9-06	Repeal	2-1-06
441-780-0070	1-9-06	Repeal	2-1-06
441-780-0080	1-9-06	Repeal	2-1-06
441-780-0090	1-9-06	Repeal	2-1-06
441-910-0000	1-1-06	Amend	1-1-06
441-910-0010	1-1-06	Amend	1-1-06
441-910-0020	1-1-06	Amend	1-1-06
441-910-0030	1-1-06	Amend	1-1-06
441-910-0040	1-1-06	Amend	1-1-06
441-910-0050	1-1-06	Amend	1-1-06
441-910-0055	1-1-06	Am. & Ren.	1-1-06
441-910-0060	1-1-06	Repeal	1-1-06
441-910-0070	1-1-06	Repeal	1-1-06
441-910-0080	1-1-06	Amend	1-1-06
441-910-0090	1-1-06	Amend	1-1-06
441-910-0092	1-1-06	Adopt	1-1-06
441-910-0093	1-1-06	Adopt	1-1-06
441-910-0095	1-1-06	Amend	1-1-06
441-910-0110	1-1-06	Amend	1-1-06
441-910-0120	1-1-06	Amend	1-1-06
441-910-0130	1-1-06	Repeal	1-1-06
441-950-0010	1-9-06	Repeal	2-1-06
441-950-0020	1-9-06	Repeal	2-1-06
441-950-0030	1-9-06	Repeal	2-1-06
441-950-0040	1-9-06	Repeal	2-1-06
441-950-0050	1-9-06	Repeal	2-1-06
443-002-0010	1-1-06	Amend	2-1-06
443-002-0030	1-1-06	Amend	2-1-06
443-002-0060	1-1-06	Amend	2-1-06
443-002-0070	1-1-06	Amend	2-1-06
443-002-0080	1-1-06	Amend	2-1-06
443-002-0090	1-1-06	Amend	2-1-06
443-002-0095	1-1-06	Adopt	2-1-06
443-002-0110	1-1-06	Amend	2-1-06
443-002-0120	1-1-06	Amend	2-1-06
445-050-0115	12-29-05	Amend(T)	2-1-06
445-050-0125	12-29-05	Amend(T)	2-1-06
445-050-0135	12-29-05	Amend(T)	2-1-06
459-007-0015	12-7-05	Amend	1-1-06
459-010-0003	1-1-06	Amend	2-1-06
459-010-0014	1-1-06	Amend	2-1-06
459-070-0001	1-1-06	Amend	2-1-06
461-101-0010	1-1-06	Amend	2-1-06
461-115-0651	1-1-06	Amend	2-1-06
461-120-0510	1-1-06	Amend	2-1-06
461-135-0380	1-1-06	Repeal	2-1-06
461-135-0701	1-1-06	Amend	2-1-06
461-135-0701(T)	1-1-06	Repeal	2-1-06
461-135-0750	1-1-06	Amend	2-1-06
461-135-0780	1-1-06	Amend	2-1-06
461-135-0830	1-1-06	Amend	2-1-06
461-135-0950	1-1-06	Amend(T)	2-1-06
461-135-1200	1-1-06	Amend	2-1-06
461-140-0220	1-1-06	Amend	2-1-06
461-140-0296	1-1-06	Amend	2-1-06
461-145-0020	1-1-06	Amend	2-1-06
461-145-0070	1-1-06	Amend	2-1-06
461-145-0110	1-1-06	Amend	2-1-06
461-145-0190	1-1-06	Amend	2-1-06
461-145-0330	1-1-06	Amend	2-1-06
461-145-0410	1-1-06	Amend	2-1-06
461-145-0440	1-1-06	Amend	2-1-06
461-145-0540	1-1-06	Amend	2-1-06
461-145-0580	1-1-06	Amend	2-1-06
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461-155-0210(T)	1-1-06	Repeal	2-1-06
461-155-0250	1-1-06	Amend	2-1-06
461-155-0270	1-1-06	Amend	2-1-06
461-155-0300	1-1-06	Amend	2-1-06
461-155-0520	1-1-06	Repeal	2-1-06
461-155-0526	1-1-06	Amend	2-1-06
461-155-0630	1-1-06	Amend	2-1-06
461-160-0580	1-1-06	Amend	2-1-06
461-160-0610	1-1-06	Amend	2-1-06
461-160-0620	1-1-06	Amend	2-1-06
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461-180-0130	1-1-06	Amend	2-1-06
461-185-0050	1-1-06	Amend	2-1-06
461-190-0161	1-1-06	Amend	2-1-06
461-190-0195	1-1-06	Adopt	2-1-06
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461-190-0241	1-1-06	Amend	2-1-06
461-195-0301	1-1-06	Amend	2-1-06
461-195-0303	1-1-06	Amend	2-1-06
461-195-0305	1-1-06	Amend	2-1-06

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461-195-0320	1-1-06	Amend	2-1-06
461-195-0321	1-1-06	Amend	2-1-06
461-195-0325	1-1-06	Amend	2-1-06
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471-010-0040	12-25-05	Amend	2-1-06
471-015-0015	1-1-06	Amend	2-1-06
471-020-0010	12-25-05	Amend	2-1-06
471-020-0021	1-8-06	Amend	2-1-06
471-030-0030	12-25-05	Repeal	2-1-06
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471-030-0049	1-8-06	Amend	2-1-06
471-030-0050	12-25-05	Amend	2-1-06
471-030-0056	1-8-06	Adopt	2-1-06
471-030-0060	12-25-05	Amend	2-1-06
471-030-0065	12-25-05	Amend	2-1-06
471-030-0076	1-12-06	Amend(T)	2-1-06
471-030-0080	1-1-06	Amend	2-1-06
471-030-0150	12-15-05	Amend	1-1-06
471-030-0174	12-25-05	Amend	2-1-06
471-031-0055	12-25-05	Amend	2-1-06
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471-031-0180	1-1-06	Repeal	2-1-06
471-040-0005	12-25-05	Amend	2-1-06
471-042-0005	12-25-05	Repeal	2-1-06
471-050-0001	12-25-05	Repeal	2-1-06
576-045-0020	12-16-05	Amend	2-1-06
576-050-0025	12-16-05	Amend	2-1-06
577-001-0100	12-15-05	Amend	1-1-06
577-001-0105	12-15-05	Amend	1-1-06
577-001-0110	12-15-05	Amend	1-1-06
577-001-0115	12-15-05	Amend	1-1-06
577-001-0120	12-15-05	Amend	1-1-06
577-060-0020	12-13-05	Amend	1-1-06
581-022-1360	12-15-05	Adopt(T)	1-1-06
581-022-1361	12-15-05	Adopt(T)	1-1-06
581-024-0195	12-29-05	Adopt(T)	2-1-06
581-024-0205	12-29-05	Amend(T)	2-1-06
581-024-0206	12-29-05	Amend(T)	2-1-06
581-024-0208	12-29-05	Amend(T)	2-1-06
581-024-0210	12-29-05	Amend(T)	2-1-06
581-024-0285	12-29-05	Amend(T)	2-1-06
583-030-0005	12-7-05	Amend	1-1-06
583-030-0009	12-7-05	Adopt	1-1-06
583-030-0010	12-7-05	Amend	1-1-06
583-030-0011	12-7-05	Am. & Ren.	1-1-06
583-030-0015	12-7-05	Amend	1-1-06
583-030-0016	12-7-05	Amend	1-1-06
583-030-0020	12-7-05	Amend	1-1-06
583-030-0021	12-7-05	Repeal	1-1-06
583-030-0025	12-7-05	Amend	1-1-06
583-030-0030	12-7-05	Amend	1-1-06
583-030-0032	12-7-05	Am. & Ren.	1-1-06
583-030-0035	12-7-05	Amend	1-1-06
583-030-0036	12-7-05	Amend	1-1-06
583-030-0038	12-7-05	Adopt	1-1-06
583-030-0039	12-7-05	Am. & Ren.	1-1-06
583-030-0041	12-7-05	Amend	1-1-06
583-030-0042	12-7-05	Amend	1-1-06
583-030-0043	12-7-05	Amend	1-1-06
583-030-0044	12-7-05	Amend	1-1-06
583-030-0045	12-7-05	Amend	1-1-06
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583-030-0049	12-7-05	Amend	1-1-06
584-017-0070	1-3-06	Amend(T)	2-1-06
584-021-0170	1-1-06	Amend(T)	1-1-06
584-036-0055	1-1-06	Amend(T)	1-1-06
603-025-0150	1-3-06	Amend(T)	2-1-06
603-052-0116	1-13-06	Amend	2-1-06
603-052-0117	1-13-06	Amend	2-1-06
603-052-0129	1-13-06	Amend	2-1-06
603-052-0150	1-13-06	Amend	2-1-06
603-052-0349	1-13-06	Repeal	2-1-06
603-052-0355	1-13-06	Amend	2-1-06
603-052-0360	1-13-06	Amend	2-1-06
603-052-0385	1-13-06	Amend	2-1-06
603-052-1200	1-13-06	Amend	2-1-06
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619-001-0030	12-15-05	Adopt	1-1-06
619-001-0040	12-15-05	Adopt	1-1-06
619-001-0050	12-15-05	Adopt	1-1-06
619-001-0060	12-15-05	Adopt	1-1-06
629-001-0010	1-1-06	Amend	1-1-06
629-001-0010(T)	1-1-06	Repeal	1-1-06
629-001-0025	1-1-06	Amend	1-1-06
629-001-0025(T)	1-1-06	Repeal	1-1-06
629-001-0057	1-13-06	Adopt	2-1-06
629-023-0410	1-3-06	Amend(T)	2-1-06
629-023-0420	1-3-06	Amend(T)	2-1-06
629-023-0430	1-3-06	Amend(T)	2-1-06
629-023-0440	1-3-06	Amend(T)	2-1-06
629-023-0450	1-3-06	Amend(T)	2-1-06
629-023-0460	1-3-06	Amend(T)	2-1-06
629-023-0490	1-3-06	Amend(T)	2-1-06
629-041-0520	7-1-06	Repeal	1-1-06
629-041-0535	7-1-06	Repeal	1-1-06
629-041-0545	7-1-06	Repeal	1-1-06
629-041-0547	7-1-06	Adopt	1-1-06
629-041-0557	7-1-06	Adopt	1-1-06
629-600-0100	1-1-06	Amend	1-1-06
629-600-0100(T)	1-1-06	Repeal	1-1-06
629-605-0100	1-1-06	Amend	1-1-06
629-605-0100(T)	1-1-06	Repeal	1-1-06
629-605-0150	1-1-06	Amend	1-1-06
629-605-0150(T)	1-1-06	Repeal	1-1-06
629-605-0170	1-1-06	Amend	1-1-06

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629-605-0173(T)	1-1-06	Repeal	1-1-06
629-605-0175	1-1-06	Amend	1-1-06
629-605-0175(T)	1-1-06	Repeal	1-1-06
629-605-0180	1-1-06	Amend	1-1-06
629-605-0180(T)	1-1-06	Repeal	1-1-06
629-605-0190	1-1-06	Amend	1-1-06
629-605-0190(T)	1-1-06	Repeal	1-1-06
629-605-0500	1-1-06	Amend	1-1-06
629-605-0500(T)	1-1-06	Repeal	1-1-06
629-610-0020	1-1-06	Amend	1-1-06
629-610-0020(T)	1-1-06	Repeal	1-1-06
629-610-0030	1-1-06	Amend	1-1-06
629-610-0030(T)	1-1-06	Repeal	1-1-06
629-610-0040	1-1-06	Amend	1-1-06
629-610-0040(T)	1-1-06	Repeal	1-1-06
629-610-0050	1-1-06	Amend	1-1-06
629-610-0050(T)	1-1-06	Repeal	1-1-06
629-610-0060	1-1-06	Amend	1-1-06
629-610-0060(T)	1-1-06	Repeal	1-1-06
629-610-0070	1-1-06	Amend	1-1-06
629-610-0070(T)	1-1-06	Repeal	1-1-06
629-610-0090	1-1-06	Amend	1-1-06
629-610-0090(T)	1-1-06	Repeal	1-1-06
629-615-0300	1-1-06	Amend	1-1-06
629-615-0300(T)	1-1-06	Repeal	1-1-06
629-623-0450	1-1-06	Amend	1-1-06
629-623-0450(T)	1-1-06	Repeal	1-1-06
629-623-0550	1-1-06	Amend	1-1-06
629-623-0550(T)	1-1-06	Repeal	1-1-06
629-623-0700	1-1-06	Amend	1-1-06
629-623-0700(T)	1-1-06	Repeal	1-1-06
629-625-0100	1-1-06	Amend	1-1-06
629-625-0100(T)	1-1-06	Repeal	1-1-06
629-625-0320	1-1-06	Amend	1-1-06
629-625-0320(T)	1-1-06	Repeal	1-1-06
629-625-0430	1-1-06	Amend	1-1-06
629-625-0430(T)	1-1-06	Repeal	1-1-06
629-630-0200	1-1-06	Amend	1-1-06
629-630-0200(T)	1-1-06	Repeal	1-1-06
629-630-0600	1-1-06	Amend	1-1-06
629-630-0600(T)	1-1-06	Repeal	1-1-06
629-630-0700	1-1-06	Amend	1-1-06
629-630-0700(T)	1-1-06	Repeal	1-1-06
629-630-0800	1-1-06	Amend	1-1-06
629-630-0800(T)	1-1-06	Repeal	1-1-06
629-635-0130	1-1-06	Amend	1-1-06
629-635-0130(T)	1-1-06	Repeal	1-1-06
629-640-0100	1-1-06	Amend	1-1-06
629-640-0100(T)	1-1-06	Repeal	1-1-06
629-640-0110	1-1-06	Amend	1-1-06
629-640-0110(T)	1-1-06	Repeal	1-1-06
629-640-0200	1-1-06	Amend	1-1-06
629-640-0200(T)	1-1-06	Repeal	1-1-06
629-640-0400	1-1-06	Amend	1-1-06
629-640-0400(T)	1-1-06	Repeal	1-1-06
629-645-0000	1-1-06	Amend	1-1-06
629-645-0000(T)	1-1-06	Repeal	1-1-06
629-645-0020	1-1-06	Amend	1-1-06
629-645-0020(T)	1-1-06	Repeal	1-1-06
629-645-0030	1-1-06	Amend	1-1-06
629-645-0030(T)	1-1-06	Repeal	1-1-06
629-645-0050	1-1-06	Amend	1-1-06
629-645-0050(T)	1-1-06	Repeal	1-1-06
629-650-0040	1-1-06	Amend	1-1-06
629-650-0040(T)	1-1-06	Repeal	1-1-06
629-660-0040	1-1-06	Amend	1-1-06
629-660-0040(T)	1-1-06	Repeal	1-1-06
629-660-0050	1-1-06	Amend	1-1-06
629-660-0050(T)	1-1-06	Repeal	1-1-06
629-665-0020	1-1-06	Amend	1-1-06
629-665-0020(T)	1-1-06	Repeal	1-1-06
629-665-0110	1-1-06	Amend	1-1-06
629-665-0110(T)	1-1-06	Repeal	1-1-06
629-665-0120	1-1-06	Amend	1-1-06
629-665-0120(T)	1-1-06	Repeal	1-1-06
629-665-0210	1-1-06	Amend	1-1-06
629-665-0210(T)	1-1-06	Repeal	1-1-06
629-665-0220	1-1-06	Amend	1-1-06
629-665-0220(T)	1-1-06	Repeal	1-1-06
629-665-0230	1-1-06	Amend	1-1-06
629-665-0230(T)	1-1-06	Repeal	1-1-06
629-665-0240	1-1-06	Amend	1-1-06
629-665-0240(T)	1-1-06	Repeal	1-1-06
629-670-0010	1-1-06	Amend	1-1-06
629-670-0010(T)	1-1-06	Repeal	1-1-06
629-670-0015	1-1-06	Amend	1-1-06
629-670-0015(T)	1-1-06	Repeal	1-1-06
629-670-0100	1-1-06	Amend	1-1-06
629-670-0100(T)	1-1-06	Repeal	1-1-06
629-670-0115	1-1-06	Amend	1-1-06
629-670-0115(T)	1-1-06	Repeal	1-1-06
629-670-0125	1-1-06	Amend	1-1-06
629-670-0125(T)	1-1-06	Repeal	1-1-06
629-670-0210	1-1-06	Amend	1-1-06
629-670-0210(T)	1-1-06	Repeal	1-1-06
629-672-0100	1-1-06	Amend	1-1-06
629-672-0100(T)	1-1-06	Repeal	1-1-06
629-672-0200	1-1-06	Amend	1-1-06
629-672-0200(T)	1-1-06	Repeal	1-1-06
629-672-0210	1-1-06	Amend	1-1-06
629-672-0210(T)	1-1-06	Repeal	1-1-06
629-672-0220	1-1-06	Repeal	1-1-06
629-672-0310	1-1-06	Amend	1-1-06
629-672-0310(T)	1-1-06	Repeal	1-1-06
629-674-0100	1-1-06	Amend	1-1-06
629-674-0100(T)	1-1-06	Repeal	1-1-06
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635-004-0027	1-1-06	Amend(T)	2-1-06
635-004-0033	11-30-05	Amend(T)	1-1-06
635-004-0033	1-1-06	Amend	1-1-06
635-004-0033(T)	11-30-05	Suspend	1-1-06
635-004-0090	1-1-06	Amend(T)	2-1-06
635-004-0170	1-1-06	Amend	1-1-06
635-005-0020	1-1-06	Amend	1-1-06
635-005-0030	1-1-06	Amend	1-1-06
635-005-0032	1-1-06	Adopt	1-1-06
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635-005-0045	12-30-05	Amend(T)	1-1-06
635-005-0045(T)	12-30-05	Suspend	1-1-06
635-006-0215	1-1-06	Amend	1-1-06
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635-006-0910	1-1-06	Amend	1-1-06
635-006-1010	1-1-06	Amend	1-1-06
635-006-1010	1-1-06	Amend	1-1-06
635-006-1015	1-1-06	Amend	1-1-06
635-006-1015	1-1-06	Amend	1-1-06
635-006-1025	1-1-06	Amend	1-1-06
635-006-1025	1-1-06	Amend	1-1-06
635-006-1035	1-1-06	Amend	1-1-06
635-006-1035	1-1-06	Amend	1-1-06
635-006-1065	1-1-06	Amend	1-1-06
635-006-1065	1-1-06	Amend	1-1-06
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635-006-1075	1-1-06	Amend	1-1-06
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635-006-1085	1-1-06	Amend	1-1-06
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635-017-0095	1-1-06	Amend(T)	2-1-06
635-018-0080	1-1-06	Amend	1-1-06
635-018-0090	1-1-06	Amend	1-1-06
635-019-0080	1-1-06	Amend	1-1-06
635-019-0090	1-1-06	Amend	1-1-06
635-021-0080	1-1-06	Amend	1-1-06
635-021-0090	1-1-06	Amend	1-1-06
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635-023-0130	1-1-06	Amend	1-1-06
635-039-0080	1-1-06	Amend	1-1-06
635-039-0080	1-1-06	Amend	1-1-06
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635-039-0090(T)	12-30-05	Suspend	1-1-06
635-042-0130	1-1-06	Amend(T)	2-1-06
635-042-0133	1-1-06	Amend(T)	2-1-06
635-042-0135	1-1-06	Amend(T)	2-1-06
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635-045-0000	1-1-06	Amend	1-1-06
635-045-0002	12-16-05	Amend	2-1-06
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635-060-0055	4-1-06	Amend	1-1-06
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635-065-0015	1-1-06	Amend	1-1-06
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635-073-0000	2-1-06	Amend	1-1-06
635-075-0026	1-1-06	Amend	1-1-06
635-080-0015	1-1-06	Amend	1-1-06
635-080-0016	1-1-06	Amend	1-1-06
635-080-0066	1-1-06	Amend	1-1-06
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635-080-0070	1-1-06	Amend	1-1-06
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635-412-0025	1-9-06	Amend	2-1-06
635-412-0035	1-9-06	Adopt	2-1-06
635-412-0040	1-9-06	Adopt	2-1-06
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660-004-0018	12-13-05	Amend	1-1-06
660-009-0000	1-1-07	Amend	1-1-06
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660-009-0030	1-1-07	Adopt	1-1-06
660-014-0040	12-13-05	Amend	1-1-06
660-015-0000	12-13-05	Amend	1-1-06
660-022-0030	12-13-05	Amend	1-1-06
690-315-0010	11-22-05	Amend	1-1-06
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731-035-0010	11-21-05	Adopt(T)	1-1-06
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731-035-0030	11-21-05	Adopt(T)	1-1-06
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731-035-0050	11-21-05	Adopt(T)	1-1-06
731-035-0060	11-21-05	Adopt(T)	1-1-06
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731-035-0080	11-21-05	Adopt(T)	1-1-06
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734-073-0130	12-14-05	Amend	1-1-06
734-079-0005	12-14-05	Amend	1-1-06
734-079-0015	12-14-05	Amend	1-1-06
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735-010-0210	1-1-06	Amend	1-1-06
735-010-0215	1-1-06	Adopt	1-1-06
735-010-0240	1-1-06	Adopt	1-1-06
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735-020-0070	1-1-06	Amend(T)	1-1-06
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735-024-0015	1-1-06	Amend(T)	1-1-06
735-024-0030	1-1-06	Amend(T)	1-1-06
735-024-0070	1-1-06	Amend(T)	1-1-06
735-024-0075	1-1-06	Amend(T)	1-1-06
735-024-0077	1-1-06	Adopt(T)	1-1-06
735-024-0080	1-1-06	Amend(T)	1-1-06
735-024-0120	1-1-06	Amend(T)	1-1-06
735-024-0130	1-1-06	Amend(T)	1-1-06
735-024-0170	1-1-06	Amend(T)	1-1-06
735-028-0010	1-1-06	Amend(T)	1-1-06
735-028-0090	1-1-06	Amend(T)	1-1-06
735-028-0110	1-1-06	Amend(T)	1-1-06
735-032-0020	1-1-06	Amend(T)	1-1-06
735-046-0080	1-1-06	Suspend	1-1-06
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735-062-0105	11-18-05	Amend	1-1-06
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735-062-0110	11-18-05	Amend	1-1-06
735-062-0110(T)	11-18-05	Repeal	1-1-06
735-062-0115	11-18-05	Amend	1-1-06
735-062-0115(T)	11-18-05	Repeal	1-1-06
735-062-0120	11-18-05	Amend	1-1-06
735-062-0120(T)	11-18-05	Repeal	1-1-06
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735-062-0135	11-18-05	Amend	1-1-06
735-062-0135(T)	11-18-05	Repeal	1-1-06
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735-064-0220	12-14-05	Amend	1-1-06
735-064-0220(T)	12-14-05	Repeal	1-1-06
735-064-0235	12-14-05	Amend	1-1-06
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735-070-0010	1-1-06	Amend	1-1-06
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735-070-0020(T)	12-14-05	Repeal	1-1-06
735-070-0030	12-14-05	Amend	1-1-06
735-070-0037	12-14-05	Amend	1-1-06
735-070-0054	12-14-05	Amend	1-1-06
735-070-0180	12-14-05	Repeal	1-1-06
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735-150-0050	1-1-06	Amend	1-1-06
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735-152-0020	1-1-06	Amend(T)	1-1-06
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735-152-0030	1-1-06	Suspend	1-1-06
735-152-0031	1-1-06	Adopt(T)	1-1-06
735-152-0034	1-1-06	Adopt(T)	1-1-06
735-152-0037	1-1-06	Adopt(T)	1-1-06
735-152-0040	1-1-06	Amend(T)	1-1-06
735-152-0045	1-1-06	Adopt(T)	1-1-06
735-152-0050	1-1-06	Amend(T)	1-1-06
735-152-0060	1-1-06	Adopt(T)	1-1-06
735-152-0070	1-1-06	Adopt(T)	1-1-06
735-152-0080	1-1-06	Adopt(T)	1-1-06
735-152-0090	1-1-06	Adopt(T)	1-1-06
735-160-0003	1-1-06	Adopt	1-1-06
740-010-0020	12-14-05	Adopt	1-1-06
740-010-0020(T)	12-14-05	Repeal	1-1-06
740-050-0610	12-14-05	Amend	1-1-06
740-055-0300	12-14-05	Repeal	1-1-06
740-055-0320	12-14-05	Amend	1-1-06
801-001-0035	1-1-06	Amend	1-1-06
801-001-0055	1-1-06	Adopt	1-1-06
801-005-0010	1-1-06	Amend	1-1-06
801-010-0050	1-1-06	Amend	1-1-06
801-010-0080	1-1-06	Amend	1-1-06
801-020-0720	1-1-06	Amend	1-1-06
801-030-0005	1-1-06	Amend	1-1-06
801-030-0015	1-1-06	Amend	1-1-06
801-030-0020	1-1-06	Amend	1-1-06
801-040-0010	1-1-06	Amend	1-1-06
801-040-0070	1-1-06	Amend	1-1-06
801-040-0090	1-1-06	Amend	1-1-06
801-050-0005	12-15-05	Amend	1-1-06
801-050-0010	12-15-05	Amend	1-1-06
801-050-0020	12-15-05	Amend	1-1-06
801-050-0030	12-15-05	Amend	1-1-06
801-050-0035	12-15-05	Adopt	1-1-06
801-050-0040	12-15-05	Amend	1-1-06
801-050-0050	12-15-05	Repeal	1-1-06
801-050-0060	12-15-05	Amend	1-1-06
801-050-0065	12-15-05	Adopt	1-1-06
801-050-0070	12-15-05	Amend	1-1-06
801-050-0080	12-15-05	Amend	1-1-06
804-020-0055	12-13-05	Amend	1-1-06
806-010-0015	12-13-05	Amend	1-1-06
806-010-0037	12-13-05	Amend	1-1-06
806-020-0020	12-13-05	Amend	1-1-06
808-002-0150	1-1-06	Adopt	2-1-06
808-002-0200	1-1-06	Amend	2-1-06
808-002-0250	1-1-06	Amend	2-1-06
808-002-0298	1-1-06	Repeal	2-1-06
808-002-0328	1-1-06	Adopt	2-1-06
808-002-0330	1-1-06	Adopt	2-1-06
808-002-0338	1-1-06	Adopt	2-1-06
808-002-0340	1-1-06	Amend	2-1-06
808-002-0360	1-1-06	Amend	2-1-06
808-002-0455	1-1-06	Adopt	2-1-06
808-002-0460	1-1-06	Repeal	2-1-06
808-002-0490	1-1-06	Adopt	2-1-06
808-002-0495	1-1-06	Adopt	2-1-06
808-002-0500	1-1-06	Amend	2-1-06
808-002-0600	1-1-06	Repeal	2-1-06
808-002-0650	1-1-06	Adopt	2-1-06
808-002-0720	1-1-06	Repeal	2-1-06
808-002-0730	1-1-06	Amend	2-1-06
808-002-0734	1-1-06	Adopt	2-1-06
808-002-0735	1-1-06	Repeal	2-1-06
808-002-0745	1-1-06	Repeal	2-1-06
808-002-0810	1-1-06	Adopt	2-1-06
808-002-0875	1-1-06	Adopt	2-1-06
808-002-0885	1-1-06	Adopt	2-1-06
808-003-0010	1-1-06	Amend	2-1-06
808-003-0015	1-1-06	Amend	2-1-06
808-003-0035	1-1-06	Amend	2-1-06
808-003-0040	1-1-06	Amend	2-1-06
808-003-0045	1-1-06	Amend	2-1-06
808-003-0060	1-1-06	Amend	2-1-06
808-003-0105	1-1-06	Amend	2-1-06
808-003-0110	1-1-06	Amend	2-1-06
808-003-0130	1-1-06	Amend	2-1-06
808-003-0225	1-1-06	Adopt	2-1-06
808-003-0230	1-1-06	Adopt	2-1-06
808-003-0235	1-1-06	Adopt	2-1-06
808-003-0240	1-1-06	Adopt	2-1-06
808-003-0245	1-1-06	Adopt	2-1-06
808-003-0250	1-1-06	Adopt	2-1-06
808-003-0255	1-1-06	Adopt	2-1-06
808-003-0260	1-1-06	Adopt	2-1-06
808-004-0320	1-1-06	Amend	2-1-06
808-004-0600	1-1-06	Amend	2-1-06
808-005-0020	1-1-06	Amend	2-1-06
809-010-0001	12-7-05	Amend	1-1-06
809-015-0000	12-14-05	Amend	1-1-06
809-015-0005	12-14-05	Amend	1-1-06
812-001-0051	1-1-06	Am. & Ren.	1-1-06
812-001-0100	1-1-06	Am. & Ren.	1-1-06
812-001-0110	1-1-06	Am. & Ren.	1-1-06
812-001-0120	1-1-06	Am. & Ren.	1-1-06
812-001-0130	1-1-06	Am. & Ren.	1-1-06
812-001-0140	1-1-06	Am. & Ren.	1-1-06
812-001-0160	1-1-06	Am. & Ren.	1-1-06
812-001-0200	1-1-06	Am. & Ren.	1-1-06
812-001-0200	1-11-06	Amend(T)	2-1-06
812-001-0300	1-1-06	Am. & Ren.	1-1-06
812-001-0305	1-1-06	Am. & Ren.	1-1-06
812-001-0310	1-1-06	Am. & Ren.	1-1-06
812-001-0500	1-1-06	Am. & Ren.	1-1-06
812-001-0510	1-1-06	Am. & Ren.	1-1-06

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812-002-0040	1-1-06	Amend	1-1-06
812-002-0060	1-1-06	Amend	1-1-06
812-002-0100	1-1-06	Amend	1-1-06
812-002-0160	1-1-06	Amend	1-1-06
812-002-0190	1-1-06	Amend	1-1-06
812-002-0260	1-1-06	Amend	1-1-06
812-002-0325	1-1-06	Amend	1-1-06
812-002-0340	1-1-06	Repeal	1-1-06
812-002-0350	1-1-06	Adopt	1-1-06
812-002-0360	1-1-06	Amend	1-1-06
812-002-0420	1-1-06	Amend	1-1-06
812-002-0430	1-1-06	Amend	1-1-06
812-002-0443	1-1-06	Amend	1-1-06
812-002-0520	1-1-06	Amend	1-1-06
812-002-0533	1-1-06	Adopt	1-1-06
812-002-0537	1-1-06	Adopt	1-1-06
812-002-0540	1-1-06	Amend	1-1-06
812-002-0555	1-1-06	Repeal	1-1-06
812-002-0640	1-1-06	Amend	1-1-06
812-002-0670	1-1-06	Amend	1-1-06
812-002-0675	1-1-06	Amend	1-1-06
812-002-0700	1-1-06	Amend	1-1-06
812-002-0720	1-1-06	Amend	1-1-06
812-002-0740	1-1-06	Amend	1-1-06
812-002-0780	1-1-06	Amend	1-1-06
812-002-0800	1-1-06	Amend	1-1-06
812-003-0170	1-1-06	Amend	1-1-06
812-003-0240	1-1-06	Amend	1-1-06
812-003-0240	1-11-06	Amend(T)	2-1-06
812-003-0420	1-1-06	Amend	1-1-06
812-004-0180	1-1-06	Amend	1-1-06
812-004-0195	1-1-06	Amend	1-1-06
812-004-0240	1-1-06	Amend	1-1-06
812-004-0250	1-1-06	Amend	1-1-06
812-004-0260	1-1-06	Amend	1-1-06
812-004-0300	1-1-06	Amend	1-1-06
812-004-0320	1-1-06	Amend	1-1-06
812-004-0325	1-1-06	Repeal	1-1-06
812-004-0340	1-1-06	Amend	1-1-06
812-004-0360	1-1-06	Amend	1-1-06
812-004-0420	1-1-06	Amend	1-1-06
812-004-0440	1-1-06	Amend	1-1-06
812-004-0450	1-1-06	Amend	1-1-06
812-004-0460	1-1-06	Amend	1-1-06
812-004-0470	1-1-06	Amend	1-1-06
812-004-0480	1-1-06	Amend	1-1-06
812-004-0500	1-1-06	Amend	1-1-06
812-004-0530	1-1-06	Amend	1-1-06
812-004-0590	1-1-06	Amend	1-1-06
812-005-0100	1-1-06	Am. & Ren.	1-1-06
812-005-0110	1-1-06	Am. & Ren.	1-1-06
812-005-0120	1-1-06	Am. & Ren.	1-1-06
812-005-0130	1-1-06	Am. & Ren.	1-1-06
812-005-0140	1-1-06	Am. & Ren.	1-1-06
812-005-0150	1-1-06	Am. & Ren.	1-1-06
812-005-0160	1-1-06	Am. & Ren.	1-1-06

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812-005-0170	1-1-06	Am. & Ren.	1-1-06
812-005-0180	1-1-06	Am. & Ren.	1-1-06
812-005-0200	1-1-06	Am. & Ren.	1-1-06
812-005-0210	1-1-06	Am. & Ren.	1-1-06
812-005-0500	1-1-06	Am. & Ren.	1-1-06
812-005-0800	1-1-06	Am. & Ren.	1-1-06
812-006-0012	1-1-06	Amend	1-1-06
812-006-0015	1-1-06	Adopt	1-1-06
812-006-0030	1-1-06	Amend	1-1-06
812-008-0110	1-1-06	Amend	1-1-06
812-009-0160	1-1-06	Amend	1-1-06
812-009-0320	1-1-06	Amend	1-1-06
812-009-0400	1-1-06	Amend	1-1-06
812-009-0420	1-1-06	Amend	1-1-06
812-009-0430	1-1-06	Amend	1-1-06
813-013-0001	1-5-06	Adopt(T)	2-1-06
813-013-0005	1-5-06	Adopt(T)	2-1-06
813-013-0010	1-5-06	Adopt(T)	2-1-06
813-013-0015	1-5-06	Adopt(T)	2-1-06
813-013-0020	1-5-06	Adopt(T)	2-1-06
813-013-0025	1-5-06	Adopt(T)	2-1-06
813-013-0030	1-5-06	Adopt(T)	2-1-06
813-013-0035	1-5-06	Adopt(T)	2-1-06
813-013-0040	1-5-06	Adopt(T)	2-1-06
813-013-0045	1-5-06	Adopt(T)	2-1-06
813-013-0050	1-5-06	Adopt(T)	2-1-06
813-013-0055	1-5-06	Adopt(T)	2-1-06
813-013-0060	1-5-06	Adopt(T)	2-1-06
820-010-0010	12-13-05	Amend	1-1-06
820-010-0205	12-13-05	Amend	1-1-06
820-010-0207	12-13-05	Adopt	1-1-06
820-010-0215	12-13-05	Amend	1-1-06
820-010-0230	12-13-05	Amend	1-1-06
820-010-0255	12-13-05	Amend	1-1-06
820-010-0305	12-13-05	Amend	1-1-06
820-010-0427	12-13-05	Adopt	1-1-06
820-010-0450	12-13-05	Amend	1-1-06
820-010-0465	12-13-05	Amend	1-1-06
820-010-0610	12-13-05	Amend	1-1-06
820-010-0618	12-13-05	Amend	1-1-06
820-010-0619	12-13-05	Adopt	1-1-06
820-010-0625	12-13-05	Amend	1-1-06
820-010-0635	12-13-05	Amend	1-1-06
836-071-0263	1-15-06	Adopt	2-1-06
836-071-0277	1-15-06	Amend	2-1-06
837-012-0625	2-13-06	Amend(T)	2-1-06
837-012-0750	2-13-06	Amend(T)	2-1-06
837-040-0001	2-1-06	Amend(T)	2-1-06
837-040-0010	2-1-06	Amend(T)	2-1-06
837-040-0020	2-1-06	Adopt(T)	2-1-06
837-040-0140	2-1-06	Amend(T)	2-1-06
839-001-0420	1-1-06	Amend	2-1-06
839-001-0470	1-1-06	Amend	2-1-06
839-014-0060	1-1-06	Amend	2-1-06
839-014-0100	1-1-06	Amend	2-1-06
839-014-0105	1-1-06	Amend	2-1-06

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839-014-0200	1-1-06	Amend	2-1-06
839-014-0380	1-1-06	Amend	2-1-06
839-014-0630	1-1-06	Amend	2-1-06
839-015-0155	1-1-06	Amend	2-1-06
839-015-0157	1-1-06	Amend	2-1-06
839-015-0160	1-1-06	Amend	2-1-06
839-015-0165	1-1-06	Amend	2-1-06
839-015-0200	1-1-06	Amend	2-1-06
839-015-0230	1-1-06	Amend	2-1-06
839-015-0260	1-1-06	Amend	2-1-06
839-015-0300	1-1-06	Amend	2-1-06
839-015-0350	1-1-06	Amend	2-1-06
839-015-0500	1-1-06	Amend	2-1-06
839-015-0508	1-1-06	Amend	2-1-06
839-015-0600	1-1-06	Amend	2-1-06
839-015-0610	1-1-06	Amend	2-1-06
839-025-0003	1-1-06	Amend	2-1-06
839-025-0004	1-1-06	Amend	2-1-06
839-025-0010	1-1-06	Amend	2-1-06
839-025-0015	1-1-06	Adopt	2-1-06
839-025-0020	1-1-06	Amend	2-1-06
839-025-0035	1-1-06	Amend	2-1-06
839-025-0100	1-1-06	Amend	2-1-06
839-025-0220	1-1-06	Amend	2-1-06
839-025-0230	1-1-06	Amend	2-1-06
839-025-0240	1-1-06	Repeal	2-1-06
839-025-0530	1-1-06	Amend	2-1-06
839-025-0700	1-1-06	Amend	2-1-06
839-025-0750	12-23-05	Amend	2-1-06
845-004-0020	1-1-06	Amend	2-1-06
845-005-0306	12-1-05	Amend	1-1-06
845-006-0335	1-1-06	Amend	1-1-06
845-010-0151	1-1-06	Amend	2-1-06
845-010-0170	1-1-06	Amend	2-1-06
848-001-0000	1-1-06	Amend	2-1-06
848-005-0020	1-1-06	Amend	2-1-06
848-005-0030	1-1-06	Amend	2-1-06
848-010-0015	1-1-06	Amend	2-1-06
848-010-0020	1-1-06	Amend	2-1-06
848-010-0026	1-1-06	Amend	2-1-06
848-010-0033	1-1-06	Amend	2-1-06
848-010-0035	1-1-06	Amend	2-1-06
848-010-0044	1-1-06	Amend	2-1-06
848-015-0010	1-1-06	Amend	2-1-06
848-015-0030	1-1-06	Amend	2-1-06
848-020-0030	1-1-06	Amend	2-1-06
848-020-0060	1-1-06	Amend	2-1-06
848-030-0000	1-1-06	Repeal	2-1-06
848-030-0010	1-1-06	Repeal	2-1-06
848-040-0105	1-1-06	Amend	2-1-06
848-040-0110	1-1-06	Amend	2-1-06
848-040-0115	1-1-06	Repeal	2-1-06
848-040-0117	1-1-06	Adopt	2-1-06
848-040-0120	1-1-06	Amend	2-1-06
848-040-0147	1-1-06	Adopt	2-1-06
848-045-0010	1-1-06	Amend	2-1-06
848-045-0020	1-1-06	Amend	2-1-06
850-060-0225	12-12-05	Amend	1-1-06
850-060-0226	12-12-05	Amend	1-1-06
851-031-0006	12-21-05	Amend	2-1-06
851-031-0045	12-21-05	Amend	2-1-06
851-045-0025	12-21-05	Amend	2-1-06
851-050-0131	12-21-05	Amend	2-1-06
851-061-0090	12-21-05	Amend	2-1-06
851-062-0010	12-21-05	Amend	2-1-06
852-060-0025	12-8-05	Am. & Ren.	1-1-06
852-060-0027	12-8-05	Am. & Ren.	1-1-06
852-060-0028	12-8-05	Am. & Ren.	1-1-06
855-025-0001	12-15-05	Adopt	1-1-06
855-025-0050	12-14-05	Adopt	1-1-06
855-041-0063	12-15-05	Amend	1-1-06
856-010-0012	11-29-05	Amend	1-1-06
860-011-0036	11-28-05	Adopt	1-1-06
860-011-0080	11-30-05	Amend	1-1-06
860-011-0080	12-21-05	Amend	2-1-06
860-012-0040	11-30-05	Amend	1-1-06
860-021-0008	11-30-05	Amend	1-1-06
860-021-0010	11-30-05	Amend	1-1-06
860-021-0033	11-30-05	Amend	1-1-06
860-021-0045	11-30-05	Amend	1-1-06
860-021-0205	11-30-05	Amend	1-1-06
860-021-0326	11-30-05	Amend	1-1-06
860-021-0335	11-30-05	Amend	1-1-06
860-021-0405	11-30-05	Amend	1-1-06
860-021-0410	11-30-05	Amend	1-1-06
860-021-0414	11-30-05	Amend	1-1-06
860-021-0415	11-30-05	Amend	1-1-06
860-021-0420	11-30-05	Amend	1-1-06
860-022-0001	11-30-05	Amend	1-1-06
860-022-0017	11-30-05	Amend	1-1-06
860-022-0040	11-30-05	Amend	1-1-06
860-022-0046	11-30-05	Amend	1-1-06
860-022-0075	11-30-05	Adopt	1-1-06
860-023-0000	12-23-05	Amend	2-1-06
860-023-0001	11-30-05	Amend	1-1-06
860-023-0001	12-23-05	Amend	2-1-06
860-023-0005	11-30-05	Amend	1-1-06
860-023-0005	12-23-05	Amend	2-1-06
860-023-0020	11-30-05	Amend	1-1-06
860-023-0054	12-23-05	Adopt	2-1-06
860-023-0055	12-27-05	Amend	2-1-06
860-023-0080	11-30-05	Amend	1-1-06
860-023-0090	11-30-05	Amend	1-1-06
860-023-0100	11-30-05	Amend	1-1-06
860-023-0110	11-30-05	Amend	1-1-06
860-023-0120	11-30-05	Amend	1-1-06
860-023-0130	11-30-05	Amend	1-1-06
860-023-0140	11-30-05	Amend	1-1-06
860-023-0150	11-30-05	Amend	1-1-06
860-023-0160	11-30-05	Amend	1-1-06
860-025-0001	11-30-05	Amend	1-1-06
860-026-0005	11-30-05	Amend	1-1-06

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860-027-0045	11-30-05	Amend	1-1-06
860-027-0120	11-30-05	Amend	1-1-06
860-027-0300	11-30-05	Amend	1-1-06
860-030-0005	11-30-05	Amend	1-1-06
860-030-0010	11-30-05	Amend	1-1-06
860-030-0015	11-30-05	Amend	1-1-06
860-030-0018	11-30-05	Amend	1-1-06
860-032-0012	12-27-05	Amend	2-1-06
860-034-0390	12-27-05	Amend	2-1-06
860-038-0005	11-30-05	Amend	1-1-06
860-038-0300	11-30-05	Amend	1-1-06
860-038-0400	11-30-05	Amend	1-1-06
860-038-0410	11-30-05	Amend	1-1-06
863-015-0186	1-1-06	Adopt(T)	2-1-06
863-015-0225	1-1-06	Adopt(T)	2-1-06
863-015-0230	1-1-06	Adopt(T)	2-1-06
877-001-0000	12-22-05	Amend	2-1-06
877-010-0025	12-22-05	Amend	2-1-06
877-020-0000	12-22-05	Amend	2-1-06
877-020-0009	12-22-05	Amend	2-1-06
877-020-0010	12-22-05	Amend	2-1-06
877-020-0012	12-22-05	Amend	2-1-06
877-020-0013	12-22-05	Amend	2-1-06
877-020-0015	12-22-05	Amend	2-1-06
877-020-0016	12-22-05	Amend	2-1-06
877-020-0020	12-22-05	Amend	2-1-06
877-020-0030	12-22-05	Amend	2-1-06
877-020-0031	12-22-05	Amend	2-1-06
877-020-0046	12-22-05	Amend	2-1-06
877-020-0050	12-22-05	Repeal	2-1-06
877-020-0055	12-22-05	Adopt	2-1-06
877-025-0000	12-22-05	Amend	2-1-06
877-025-0005	12-22-05	Amend	2-1-06
877-030-0040	12-22-05	Amend	2-1-06
877-030-0050	12-22-05	Amend	2-1-06
877-030-0070	12-22-05	Amend	2-1-06
877-030-0090	12-22-05	Amend	2-1-06
877-030-0100	12-22-05	Adopt	2-1-06
877-035-0012	12-22-05	Amend	2-1-06
877-035-0013	12-22-05	Adopt	2-1-06
877-035-0015	12-22-05	Amend	2-1-06
877-040-0015	12-22-05	Amend	2-1-06
877-040-0025	12-22-05	Repeal	2-1-06
877-040-0027	12-22-05	Repeal	2-1-06
877-040-0050	12-22-05	Amend	2-1-06
877-040-0055	12-22-05	Amend	2-1-06
877-040-0060	12-22-05	Repeal	2-1-06
877-040-0065	12-22-05	Repeal	2-1-06
877-040-0070	12-22-05	Repeal	2-1-06
918-008-0075	1-1-06	Adopt	2-1-06
918-008-0080	1-1-06	Adopt	2-1-06
918-008-0085	1-1-06	Adopt	2-1-06
918-008-0090	1-1-06	Adopt	2-1-06
918-008-0095	1-1-06	Adopt	2-1-06
918-008-0110	1-1-06	Adopt	2-1-06
918-008-0115	1-1-06	Adopt	2-1-06
918-008-0120	1-1-06	Adopt	2-1-06
918-020-0090	1-1-06	Amend	2-1-06
918-050-0000	1-1-06	Amend	2-1-06
918-050-0010	1-1-06	Amend	2-1-06
918-050-0020	1-1-06	Amend	2-1-06
918-050-0030	1-1-06	Amend	2-1-06
918-050-0100	1-1-06	Amend	2-1-06
918-050-0110	1-1-06	Amend	2-1-06
918-050-0120	1-1-06	Amend	2-1-06
918-050-0130	1-1-06	Amend	2-1-06
918-050-0140	1-1-06	Amend	2-1-06
918-050-0150	1-1-06	Amend	2-1-06
918-050-0160	1-1-06	Amend	2-1-06
918-050-0170	1-1-06	Amend	2-1-06
918-050-0200	1-1-06	Repeal	2-1-06
918-050-0800	1-1-06	Amend	2-1-06
918-090-0000	1-1-06	Amend	1-1-06
918-090-0010	1-1-06	Amend	1-1-06
918-090-0200	1-1-06	Amend	1-1-06
918-090-0210	1-1-06	Amend	1-1-06
918-100-0000	1-1-06	Amend	2-1-06
918-100-0030	1-1-06	Amend	2-1-06
918-225-0440	1-1-06	Repeal	2-1-06
918-225-0610	1-1-06	Amend	2-1-06
918-251-0030	1-1-06	Repeal	2-1-06
918-251-0040	1-1-06	Repeal	2-1-06
918-261-0025	1-1-06	Adopt	2-1-06
918-305-0030	1-1-06	Amend	2-1-06
918-305-0110	1-1-06	Amend	2-1-06
918-305-0120	1-1-06	Amend	2-1-06
918-305-0130	1-1-06	Amend	2-1-06
918-305-0150	1-1-06	Amend	2-1-06
918-305-0160	1-1-06	Amend	2-1-06
918-305-0180	1-1-06	Amend	2-1-06
918-400-0230	1-1-06	Repeal	2-1-06
918-525-0310	1-1-06	Amend	2-1-06
918-525-0410	1-1-06	Amend	2-1-06
918-525-0420	1-1-06	Amend	2-1-06
918-525-0520	1-1-06	Amend	2-1-06
918-690-0340	1-1-06	Repeal	2-1-06
918-690-0350	1-1-06	Repeal	2-1-06